

**ILLINOIS STATE POLICE MERIT BOARD  
OF THE STATE OF ILLINOIS**

**IN THE MATTER OF:**

**TROOPER CODY GARZA  
I.D. # 6269**



**Illinois State Police  
Merit Board No. 17 - 02**

**DECISION**

THIS CAUSE comes before the Merit Board on an eight-count *Complaint* filed by Leo P. Schmitz, Director of the Illinois State Police, following a full hearing before duly appointed Merit Board Hearing Officer, Peggy J. Ryan.

**FINDINGS OF FACT**

The Merit Board, having reviewed the charges filed, the testimony and evidence submitted, the Briefs of Counsel, the Hearing Officer's *Recommended Findings of Fact and Conclusions of Law*, the *Respondent's Response to Hearing Officer's Recommended Findings of Fact and Conclusions of Law*, the *Petitioner's Responses and Objections to the Hearing Officer's Recommended Findings of Fact and Conclusions of Law*, and the *Hearing Officer's Response to Portion of Respondent's Response to Hearing Officer's 'Penalty Considerations' Section of Recommended Findings of Fact and Conclusions of Law*, finds as follows:

On August 1, 2015, at approximately 8:00 pm, Trooper Cody Garza attended his ten year high school reunion and brought a cooler with twelve bottles of beer. Tr. 22-23, 811. While at the reunion, he drank two of the beers and left about two hours after his arrival with his classmates Shane Arrasmith, Oakley Sapp, and Cory Lynch. Tr. 23-25. Garza and his classmates went to Josephine's Bar. Tr. 24, 471. While there Garza had a couple more drinks. Tr. 24.

After leaving Josephine's the group went to the Sportsman's Inn Bar. Tr. 26, 477. When the bar was closing, around 2:45 am, Trooper Garza went to use the bathroom. Tr. 57, 233, 479. Garza knocked on the door and asked what the occupants were doing in there. Tr. 103-04. Frederick Stanford and another patron were in the restroom. Tr. 104. When the other patron was finished, Garza entered the restroom. Tr. 104. While Garza was urinating Frederick Stanford walked over towards Garza with a white plastic bag and asked him if he wanted any. Tr. 823-24. Garza believed the white plastic bag contained cocaine. Tr. 825. Garza showed Stanford his badge and identified himself as a cop stating it probably would be a good idea if Stanford threw it in the toilet and Stanford did so. Tr. 824-25.

After they left the bathroom, Arrasmith approached Garza, and Garza told Arrasmith Stanford tried to sell him cocaine while they were in the restroom. Tr. 480. Garza then performed a search on Stanford. Tr. 106-07, 482. While Garza performed the search Stanford placed the belongings from his pockets in Arrasmith's hands. Tr. 108, 482. Around this time, 2:45-3:00 am, the Sportsman's Inn Bar was closing and the bartenders had instructed the patrons to leave several times. Tr. 237. Bartender Carissa Miller instructed the patrons, including Garza, Arrasmith, and Stanford, to leave the bar. Tr. 239. While other patrons left Garza and Stanford continued to talk near the restrooms. Tr. 237. Miller had called 9-1-1 at least twice, around 3:15-3:20 am and 3:35-3:40 am, for police to get patrons out of the bar. Tr. 245-46. Officer Joshua Brown of the Westville Police Department and Officer Andrew Nickle of the Georgetown Police Department responded to a call from the Sportsman's Inn Bar because a bartender was complaining that patrons were refusing to leave. Tr. 142. Officer Brown was wearing his uniform and duty belt while Officer Nickle was in plain clothes as he was riding with Officer Brown to gain experience. Tr. 145.

When Brown and Nickle arrived Garza was speaking on the telephone saying the police needed to get there right now. Tr. 145. Brown identified himself as a police officer but Garza continued to talk on the phone for a period of time between 30 seconds and two minutes. Tr. 145. Brown told Garza he had to leave the bar. Tr. 143, 145, 146. After being told to leave the bar two or three times, Garza verbally identified himself as a State Trooper. Tr. 147. Garza told Brown that a black male had approached him in the bathroom and tried to sell him cocaine for \$20. Tr. 147. Brown saw Stanford standing at the bar saying I don't have anything and taking things out of his pockets. Tr. 147. Brown spoke to Stanford and patted him down on the outside of his pants and waistband and found no contraband. Tr. 148. Brown asked Garza and Stanford to leave the bar. Tr. 149. When asked to leave Garza stated that was bullshit and Brown was a dirty cop. Tr. 150. Brown continued to ask Garza to leave the bar and Garza ignored him. Tr. 151. Garza left the bar after Stanford had left. Tr. 152. At this time Garza appeared intoxicated to Brown based on his slurred speech, glassy eyes, uneasiness on his feet, and his exaggerated mannerisms. Tr. 149-50. Officer Brown remained in the bar after Garza left and then he received a radio call to the parking lot. Tr. 153.

Officer Nickle went outside with Officer Boswell from the Tilton Police Department. Tr. 202. Nickle and Boswell were in the parking lot when they saw Garza standing at Stanford's car window yelling at him. Tr. 203. Boswell contacted Brown via radio and Brown joined Nickle and Boswell in the parking lot. Tr. 204. Garza was telling Stanford not to leave. Tr. 153. Brown asked Stanford if he wanted to pursue charges against Garza and Stanford said no. Tr. 154. Brown asked Garza to leave several more times. Tr. 154, 204. Garza argued, said this was a "bunch of fucking bullshit" and that he could not be thrown out of the Dollar General parking lot. Tr. 155. Garza walked to his vehicle. Tr. 155. Brown told Garza that it would be in his

best interest not to get into his vehicle and drive because he was DUI. Tr. 155-56. Garza got in Sapp's vehicle and left the parking lot. Tr. 838. Sapp and Garza returned shortly after and Garza got into his own vehicle and drove from the Sportsman's Inn Bar to Steak n Shake. Tr. 840. Brown left and drove past the Sportsman's Inn Bar ten or fifteen minutes after the parking lot incidents and Garza's vehicle was gone. Tr. 162. After discussing the incident with his Captain, Brown called ISP District 10 to complain about his interactions with Garza. Tr. 157-58. He said Garza was disrespectful and uncooperative. Tr. 158.

At approximately 3:45 am on August 2, 2015, Garza and Sapp arrived at the Steak n Shake in Danville, each in their own vehicle. Tr. 840-41. They walked to the front door and it was locked. Tr. 841. A worker said the lobby was closed and they had to order at the drive thru. Tr. 841. Garza walked to the drive thru lane. Tr. 842. Sapp went back to his truck as Garza was going to place an order for both of them. Tr. 842-43. While Garza was standing at the drive thru a vehicle that he believed had four occupants pulled up behind him. Tr. 843-44. Casey Mason got out of the rear driver's side seat and approached Garza. Tr. 844. Mason asked Garza if the menu board was broken and Garza said "no, I just got up here... another car just ordered." Tr. 844. Mason returned to the vehicle but approached Garza again later. Tr. 845-46. Mason told Garza to "get the fuck out of the way" and continued walking towards him. Tr. 846-47. Garza then showed Mason his badge and identified himself as a police officer. Tr. 847. Garza went to put his badge back in his pocket and Mason told him not to reach for anything. Tr. 847-48. Mason then pushed Garza in the chest causing Garza to lose his balance. Tr. 848. Garza fell and hit his right hip and his head on the pavement. Tr. 848. Garza started to get up telling Mason to calm down. Tr. 848. As Garza got to his feet Mason began to punch him in the face. Tr. 848. Garza attempted to draw his firearm with the intent to display it hoping that would stop the



attack. Tr. 849. Mason tackled Garza and grabbed for the gun. Tr. 849. At some point during the tackle the gun discharged. Tr. 849. Garza remembers Mason punching him with one hand and grabbing the gun with the other. Tr. 850. Garza said the discharge of the weapon was unintentional. Tr. 852. Garza told Sapp to call the police and Mason to drop the gun. Tr. 854. Mason walked away, got into a vehicle, and left. Tr. 854. Garza waited at the Steak n Shake for the police. Tr. 854.

Danville Police Officer John McFarland was dispatched to the Steak n Shake for a report of a subject with a gun. Tr. 273-74. Upon arriving Garza and Sapp approached him. Tr. 274. Garza explained how he was disarmed of his service weapon. Tr. 275. Garza appeared intoxicated – his eyes were red and glassy and his posture was consistent with being intoxicated. Tr. 275. Garza did not complain of injuries. Tr. 277. McFarland transported Garza to the Danville Public Safety Building and escorted him to an interview room. Tr. 279-80.

Danville Police Officer John Dunavan was at the Public Safety Building when he heard radio traffic that Casey Mason was at the building with the trooper's gun. Tr. 293. Officer Dunavan exited the front of the building and held Mason and the driver at gun point until another officer arrived. Tr. 293. Trooper Garza's gun had been thrown out of the vehicle and sat six to eight feet west of the vehicle. Tr. 293-94. Mason was extremely scared, shook up, shaking. Tr. 294. Officer Dunavan recovered the weapon, ejected the magazine, and placed it in an evidence locker. Tr. 294. There were eight rounds remaining in the magazine. Tr. 295. The capacity of the magazine was ten. Tr. 298.

Sergeant Josh Campbell arrived at the Public Safety Building around 6:00 am and went to the interview room to see Garza. Tr. 303. Campbell asked Garza to take a breath test because it might be relevant to the Steak n Shake incident. Tr. 309. Campbell took Garza to another room

for the test which Garza voluntarily submitted to. Tr. 310. Campbell did not perform the standard 20-minute observation period because the test was not being done for DUI purposes. Tr. 312. Garza did not tell Campbell he vomited before the test. Tr. 313, 315. Campbell did not smell vomit or see vomit residue or splatter. Tr. 313. Campbell said if he was told Garza had vomited before the breath test, he would have put it in his report. Tr. 346. Vermilion County Sheriff's Office Sergeant Kevin Maskell performed the breath test. Tr. 359. The test occurred at 6:59 am and showed a BAC of .153. Pet. Ex. 13. Campbell also observed the entire breath test. Tr. 314, 316. He then escorted Garza back to the interview room and took photographs of his injuries. Tr. 316-17. Approximately two hours after the breath test Campbell saw and heard Garza vomiting into the garbage can. Tr. 321, 329.

Maskell is a Certified Breath Analysis Operator. Pet. Ex. 11. Maskell has been conducting breath tests for nineteen years and estimates he has performed 500 or 600 tests during his career. Tr. 356, 358. Maskell stated that since Garza was not being arrested for a DUI charge he did not need a 20-minute observation period. Tr. 365. He testified that the fact this is a quick test versus a normal DUI test did not affect the functioning of the machine. Tr. 380. Maskell testified if there is the presence of mouth alcohol the machine will show insufficient breath sample. Tr. 380.

Trooper Gary Anderton is a twenty-year veteran of ISP and is currently assigned to the Academy with the Breath Alcohol Section. Tr. 405. Anderton had conducted a certification check on the machine used to test Garza several times. Tr. 420. Anderton testified the instrument detects mouth alcohol and cancels the test. Tr. 424. Anderton was aware Garza stated he vomited five to ten minutes before the test, and he had been sitting in the interview room for three hours prior to the test during which he was not consuming alcohol. Tr. 440-41.

He does not believe alcohol would have remained in Garza's stomach and the test result would have been accurate. Tr. 441-44, 447.

Todd Savage is certified as an ISP Breath Alcohol Technician. Tr. 267, Pet. Ex. 21. He travels to police department's and sheriff's offices to ensure that breathalyzer instruments are accurate and working properly. Tr. 629. Savage agreed that when a person is subject to a quick test they typically skip the twenty-minute observation period. Tr. 647. Savage testified that mouth alcohol due to vomit would have been flagged by the testing instrument and the test cancelled. Tr. 652.

The Board finds the above testimony related to alcohol testing convincing and finds that Garza had blood alcohol level of .153 at the time of the test.

John Wetstein is employed with ISP with the Forensic Science Command, Toxicology Section. Tr. 533, 534. Wetstein used retrograde extrapolation to determine that Garza's blood alcohol concentration between 3:30 am and 3:45 am would have been between .185 and .218. Tr. 548. Wetstein estimated that Garza consumed between thirteen and eighteen beers on the night of August 1 and early morning of August 2, 2015. Tr. 553, 566, Pet. Ex. 17. The Board finds Wetstein's testimony convincing and holds that between 3:30 am and 3:45 am Garza had a blood alcohol concentration between .185 and .218. The Board finds that Garza consumed between thirteen and eighteen beers on the night of August 1 and early morning of August 2, 2015.

#### **DETERMINATION OF CHARGES**

The Merit Board finds proven by a preponderance of the evidence the violations of the Department's Rules of Conduct (ROC) by Trooper Garza as alleged in Counts I through VII of

the *Complaint*. The Merit Board finds Count VIII not proven. Specifically, the Merit Board finds by a preponderance of the evidence that Trooper Garza:

(a) violated ROC-002, Paragraph III.A.47.b as alleged in Count I of the *Complaint*, in that he, while off-duty, drove a vehicle while under the influence of alcohol, when he, on August 2, 2015, while off-duty, drove his personal vehicle while under the influence of alcohol in Vermilion County driving from the Sportsman's Inn Bar to Steak n Shake between with a blood alcohol level between .185 and .218 based on the retrograde extrapolation;

(b) violated ROC -002, Paragraph III.A.41.c as alleged in Count II of the *Complaint*, in that he failed to truthfully answer questions in a Department of State Police personnel investigation administrative interview when he made the following statements:

- (1) That he did not conduct a search of Frederick Stanford's person while in the Sportsman's Inn Bar;
- (2) That he only consumed four beers that evening, two at the reunion and two at Josephine's Bar; and
- (3) That his level of impairment at the time of the altercation with Casey Mason was not beyond what it normally is, meaning that he was not intoxicated during the altercation with Mason;

The Board finds that Garza did conduct a search of Frederick Stanton while in the Sportsman's Inn Bar. The Board finds that Garza consumed between thirteen and eighteen beers based on the retrograde extrapolation performed by John Wetstein. The Board finds by a preponderance of the evidence that Garza was intoxicated at the time of the altercation with Mason at the Steak n Shake;

(c) violated ROC -002, Paragraph III.A.55 as alleged in Count III of the *Complaint*, in that he obstructed an investigation by destroying, altering, concealing, or disguising real evidence when on August 2, 2015, Garza identified himself to Frederick Stanford as a police officer in the bathroom of the Sportsman's Inn Bar in Westville, Illinois, and made Stanford destroy real evidence, consisting of suspected cocaine by instructing Stanford to throw the suspected cocaine in the toilet and flush it down the drain;

(d) violated ROC-002, Paragraph III.A.35 as alleged in Count IV of the *Complaint*, in that he concealed, destroyed, removed, disguised, or altered any property or evidence in connection with an investigation or other police action, when on August 2, 2015, Garza identified himself to Frederick Stanford as a police officer in the bathroom of the Sportsman's Inn Bar in Westville, Illinois, and made Stanford destroy real evidence, consisting of suspected cocaine by instructing Stanford to throw the suspected cocaine in the toilet and flush it down the drain;

(e) violated ROC-002, Paragraphs III.A.47.g as alleged in Count V of the *Complaint*, in that he consumed alcoholic beverages, while off-duty, to the extent that it resulted in impairment, intoxication, or obnoxious or offensive behavior that discredited him or the Department, or rendered him unfit to report for his next regular tour of duty, when he, on August 2, 2015, while off-duty, consumed alcoholic beverages to the extent that it resulted in impairment, intoxication, or obnoxious or offensive behavior that discredited himself and/or the Department, in that he was arrogant, cocky, and aggressive with witnesses and responding officers while at the Sportsman's Inn Bar, he insulted and used profane language toward responding officers at the Sportsman's Inn Bar, calling one of the officers a "dirty cop," he refused to obey direction from the

responding officers to exit the Sportsman's Inn Bar and to leave the area, and he was disrespectful and unpleasant for the responding officers to deal with;

(f) violated ROC-002, Paragraphs III.A.8 as alleged in Count VI of the *Complaint*, in that he failed to maintain a level of conduct in his personal and business affairs that is in keeping with the highest standards of the law enforcement profession, and participated in conduct that impaired his ability to perform as a law enforcement officer or brought the Department into disrepute, when on August 2, 2015, while off-duty, he became intoxicated and refused to leave the Sportsman's Inn Bar causing the bartender to call the police and remove him, he was uncooperative disrespectful to responding officers, and he disobeyed their instruction that he not drive his vehicle from the scene;

(g) violated ROC-002, Paragraph III.A.8 as alleged in Count VII of the *Complaint*, in that he failed to maintain a level of conduct in his personal and business affairs that is in keeping with the highest standards of the law enforcement profession, and participated in conduct that impaired his ability to perform as a law enforcement officer or brought the Department into disrepute, when on August 2, 2015, while off-duty, he became intoxicated and was involved in a verbal and physical altercation with Casey Mason while attempting to order food at Steak n Shake while standing in the drive thru lane, as a result of which he displayed his secondary firearm and it discharged two rounds, resulting in a criminal investigation against him by the Danville Police Department; and

(h) did not violate ROC-002, Paragraph III.A.38 as alleged in Count VIII of the *Complaint*.

#### **CONSIDERATION OF MITIGATING AND AGGRAVATING FACTORS**

In making its determination of the appropriate level of discipline, the Merit Board considered all mitigating and aggravating factors presented by Trooper Garza and the Department, including, but not limited to, the following:

The Merit Board considered the testimony of Trooper Garza's supervisors with reference to his work performance. The Merit Board considered Trooper Garza's testimony that he is not likely to engage in similar misconduct in the future and that the occurrences on August 1 and 2, 2015, were an aberration from the type of conduct normally displayed by him.

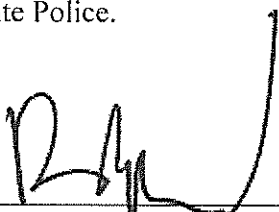
Trooper Garza provided several prior Merit Board decisions and other ISP disciplinary action. The Merit Board has reviewed and considered each of these cases, and finds that none of the offered cases are of a wholly similar type or degree of misconduct. While each of these individual cases involves some type of misconduct found in the present case, no case offered includes the same type, amount, and severity of misconduct presently before the Merit Board.

The Merit Board finds the evidence offered in mitigation does not overcome the evidence which forms the basis for discipline.

#### **PENALTY**

The entirety of the evidence presented shows Trooper Garza's continuance as an officer with the Illinois State Police would be detrimental to the discipline and efficiency of the Department. It is, therefore, the unanimous decision of the Merit Board to terminate Trooper Cody Garza from employment with the Illinois State Police.

Dated this 23<sup>rd</sup> day of July, 2018.

  
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Reeve Waud, Chairman  
State Police Merit Board, State of Illinois

STATE OF ILLINOIS  
ILLINOIS STATE POLICE MERIT BOARD

**RECEIVED**

APR 02 2018

ILLINOIS STATE POLICE  
MERIT BOARD

IN THE MATTER OF:

TROOPER CODY GARZA

I.D. 6269



DOCKET NO. 17-2

RECOMMENDED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

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## **I. BACKGROUND**

### **A. Pleadings**

On July 6, 2017, Director Leo P. Schmitz of the Illinois State Police (hereinafter "Department") filed a Complaint with the Illinois State Police Merit Board. The Complaint includes eight counts of alleged violations against Trooper Cody Garza (hereinafter "Garza"). Director Schmitz requests that the Illinois State Police Merit Board conduct a hearing in this matter and discharge Garza from his employment with the Department.

Allegations of the Complaint address Garza's appearance at his high-school reunion at Forest Glenn Park in Vermillion County on August 1, 2015, his conduct at Josephine's Bar and, allegedly, Julie's Bar in Georgetown and Westville, Illinois in the late hours of August 1, 2015/early hours of August 2, 2015. Additional allegations contained in the Complaint arise from Garza's conduct at Sportsman's Bar ("Sportsman's") in Westville, Illinois in the early morning hours of August 2, 2015. Additional allegations contained in the Complaint arise from Garza's conduct at a Danville Steak N Shake early on August 2, 2015. Additional allegations of the Complaint arise from the Department's questioning of Garza on November 29, 2016, during an administrative interview.

Count I of the Complaint alleges a violation of Department Directive ROC-002, Paragraph III.A 47.b which states "An officer will not, while on or off duty, drive or be in physical control of a vehicle while under the influence of alcohol..." Count I of the Complaint alleges that on August 2, 2015, Garza, while off duty, drove his personal vehicle under the influence of alcohol in Vermillion County, Illinois.

Count II of the Complaint alleges a violation of Department Directive ROC-002, Paragraph III.A.1.41.c (Rule 41.c) which requires that officers truthfully answer questions by, or

render material and relevant statements to, competent authority in a Department personnel investigation when said officer is the subject of the investigation. The Complaint alleges that Garza violated this rule on November 29, 2016, when administratively interviewed by Department personnel, when he denied:

(1) that he used a Department issued PBT on a female subject while inside Josephine's Bar;

(2) that he did not go inside Julie's Bar in Westville;

(3) that he did not conduct a search of Frederick Stanford's person while in Sportsman's;

(4) that he only consumed four beers that evening, two at his class reunion and two at Josephine's Bar;

(5) that he did not consume, nor purchase, any beers while at Sportsman's;

(6) that his level of impairment at the time of his altercation with Casey Mason was not beyond what it normally is, meaning that he was not intoxicated during the altercation.

Count III of the Complaint alleges a violation of Department Director ROC-002, Rules of Conduct, Paragraph III.A.55 which states:

"Officers will not obstruct any investigation by destroying, altering, concealing or disguising real evidence, or by planting false evidence or furnishing false information to lawful authority."

Count III of the Complaint alleges:

"Garza obstructed an investigation by having Frederick Stanford (hereinafter "Stanford") destroy real evidence, consisting of suspected cocaine, when he identified himself to Stanford as a police officer in the bathroom of the Sportsman's Inn Bar in Westville, Illinois, and instructed Stanford to throw the suspected cocaine in the toilet and flush it down the drain."

Count IV of the Complaint alleges a violation of Department Directive ROC-002, Rules of Conduct, Paragraph III.A.35 which states:

“Officers will not convert to their own use, manufacture, conceal, falsify, destroy, remove, disguise, or alter any property or evidence on connection with an investigation or other police action, except in accordance with established Departmental procedures.”

Count IV of the Complaint alleges that Garza violated this rule on August 2, 2015. Garza destroyed property or evidence, being suspected cocaine, in connection with an investigation or other police action when he identified himself to Stanford as a police officer in the bathroom of Sportsman’s and instructed Stanford to throw the suspected cocaine in the toilet and flush it down the drain.

County V of the Complaint alleges a violation of Department Directive ROC-002, Paragraph III.A. 47g., which states:

“Officers will not: ...

“consume alcoholic beverages, while off-duty, to the extent that it results in impairment, intoxication, or obnoxious or offensive behavior that discredits them or the Department, or renders the officers unfit to report for their next regular tour of duty.”

Count V of the Complaint alleges that Garza violated this rule in that on August 2, 2015, while off-duty, he consumed alcoholic beverages to the extent that it resulted in impairment, intoxication, or obnoxious and/or offensive behavior that discredited Garza and/or the Department, in that he was arrogant, cocky, and aggressive with witnesses and responding officers while at Sportsman’s; he insulted and used profane language toward responding local officers at Sportsman’s, calling one of the officers a “dirty cop”; he refused to obey direction from the responding officers to exit Sportsman’s and to leave the area; he was disrespectful and

unpleasant for the responding officers to deal with, to such an extent that Westville Police Officer Joshua Brown attempted to file a formal complaint against him.

County VI of the Complaint alleges a violation of Department Directive ROC-002, Paragraph III.A.8 which states:

"Officers will maintain a level of conduct in their personal and business affairs that is in keeping with the highest standards of the law enforcement profession. Officers will not participate in any conduct that impairs their ability to perform as law enforcement officers or causes the Department to be brought into disrepute."

County VI of the Complaint alleged that Garza violated this rule in that on August 2, 2015, while off-duty, he failed to conduct himself in keeping with the highest standards of the law enforcement profession and brought the Department into disrepute when he became intoxicated and refused to leave Sportsman's Inn Bar causing the bartender to call police to remove him; he was uncooperative and disrespectful to responding officers; and he disobeyed their instruction that he not drive his vehicle from the scene.

Count VII of the Complaint alleges a violation of Department Directive ROC-002, Paragraph III.A. 8 which states:

"Officers will maintain a level of conduct in their personal and business affairs that is in keeping with the highest standards of the law enforcement profession. Officers will not participate in any conduct that impairs their ability to perform as law enforcement officers or causes the Department to be brought into disrepute."

Count VII of the Complaint alleges that Garza violated this rule in that on August 2, 2015, while off-duty, he failed to conduct himself in keeping with the highest standards of the law enforcement profession and brought the Department into disrepute when he became intoxicated and was involved in a verbal and physical altercation with Casey Mason while attempting to order food at the Steak n Shake, while standing in the drive-through lane, as a result of which

he displayed his secondary firearm and it discharged two rounds, resulting in a criminal investigation against him by the Danville Policy Department.

Count VIII of the Complaint alleges a violation of Department Directive ROC-002, Paragraph III.A.38 which states:

"Officers will utilize Department equipment only for its intended purpose, in accordance with established Department procedures and will not abuse or damage Department equipment. Officers will use reasonable care to avoid loss of Department equipment. All Department equipment issued to officer's will be maintained in proper order."

Count VIII of the Complaint alleges that Garza violated this rule in that on August 2, 2015, while off-duty, he utilized his Department issued PBT on an unidentified female at Josephine's Bar for personal reasons not associated with the performance of his duties.

#### **B. Pre-Hearing Procedures**

The Complaint in this case was filed on July 6, 2017. Garza was represented by attorney Guy Studach. Assistant Attorney General Anupama Paruchuri has represented the Department throughout this matter. Assistant Attorney General Samantha Costello also assisted in representing the Department. Discovery was conducted and both parties exchanged documents and witness lists as provided in the Rules.

On September 22, 2017, a telephone pretrial hearing was conducted wherein counsel for the Department indicated it had mailed the Hearing Officer a privilege log and e-mails for in camera review and ruling pursuant to the Hearing Officer's September 14, 2017 Order.

On November 21, 2017, the Hearing Officer found e-mails between Department Attorney John Hosteny and Kimberly Hart to be privileged and found e-mails between John Hosteny and David Wolf not to be privileged. Counsel for the Department was directed to deliver over the Hosteny/Wolf e-mails to Attorney Hosteny. A notice by counsel for Garza for the Department to

produce at hearing an Intoxilyzer 500 PBT was complied with. Agreement was reached by the parties and approved by the parties for Shane Arrasmith to testify via telephone.

### **C. Hearing**

The hearing in this case was held on November 20, 21, 27 and 29, 2017. Testimonial and documentary evidence was presented during the hearing. During the hearing, the Department was represented by Assistant Attorney General Anupama Paruchuri and by Assistant Attorney General Samantha Costello. The Department's Attorney, John Hosteny, was also present. Attorney Guy Studach continued to represent Garza. Following the close of the evidence at the hearing on November 29, 2017, the court reporter was ordered to file transcripts by December 29, 2017. Pursuant to Agreement, a briefing schedule was established for simultaneous written closing arguments to be filed by January 29, 2018 and Reply briefs, if any, by either party to be filed by February 15, 2018. Pursuant to this schedule, the Hearing Officer's Recommended Findings of Facts and Conclusions of Law were to be submitted 45 days thereafter.

#### **i. Hearing Witnesses**

The following witnesses testified at the hearing in this case. The page number of the transcript of the proceedings upon which the testimony of the witness starts is included in parentheses.

#### ***November 20, 2017***

1. Trooper Code Garza (12)
2. Fredrick Stanford (27)
3. Officer Joshua Brown (140)
4. Officer Andrew Nickle (196)
5. Corissa Miller (225)

6. Officer John McFurland (272)
7. Officer Jason Dunavan (289)
8. Sergeant Josh Campbell (301)
9. Sergeant Kevin Maskel (352)

*November 21, 2017*

10. Trooper Gary Anderton (404)
11. Shane Arrasmith (467)
12. Trooper Gary Anderton (516)
13. Sergeant Christopher Wilkes (526)
14. John Wetstein (532)
15. Master Sergeant Martez Malone (582)
16. Master Sergeant David Keltner (588)
17. Sergeant Brad Spragno (602)
18. Trooper Kenneth Gurney (608)
19. Major Steve Loan (613)

*November 27, 2017*

20. Todd Savage (627)
21. Colonel Joann Johnson (657)
22. Master Sergeant Mark Dorencz (766)
23. Master Sergeant Ronald Caves (784)
24. Master Sergeant Jeffrey Liskh (793)
25. Trooper Cody Garza (808)



*November 29, 2017*

26. Special Agent Tarod Deeder (927)

**ii Exhibits**

The following exhibits were admitted into evidence in this case:

Petitioner's Exhibits

Petitioner's Exhibit 1	Administrative Code, Title 20, Part 1286
Petitioner's Exhibit 2	August 2, 2015 Danville Police Department video interview of Trooper Garza
Petitioner's Exhibit 3	ISP Notification of Allegations
Petitioner's Exhibit 4	Trooper Garza Statement
Petitioner's Exhibit 5	2014 Physical Fitness Inventory Test for Trooper Garza
Petitioner's Exhibit 6	Photographs at Steak N Shake and related to Steak N Shake incident
Petitioner's Exhibit 7	8/2/15 photos taken by Josh Campbell, Danville Police Department of Trooper Garza and some of his possessions
Petitioner's Exhibit 8	Garza's badge and ID taken by Josh Campbell, Danville Police Department on 8/2/15
Petitioner's Exhibit 9	Book-In photo of Code Garza taken by Josh Campbell, Danville Police Department
Petitioner's Exhibit 10	Photos of Steak N Shake parking lot
Petitioner's Exhibit 11	Kevin Maskel certification to conduct Intoxilyzer
Petitioner's Exhibit 12	Breath analysis instrument log
Petitioner's Exhibit 13	Breath analysis log - 8/2/15/Kevin Maskel
Petitioner's Exhibit 14	Resume/cv of Trooper Gary J. Anderton
Petitioner's Exhibit 15	Curriculum vitae of John P. Wetstein

Petitioner's Exhibit 16	Memorandum from John M. Hosteny, Department Legal Counsel, to John Wetstein regarding Wetstein providing of an opinion regarding Garza intoxication
Petitioner's Exhibit 17	Memorandum from John Wetstein to Attorney John Hosteny regarding his opinion as to Garza intoxication
Petitioner's Exhibit 18	Captain Darryl Board complaint against Garza
Petitioner's Exhibit 20	Resume/cv of Glenn Todd Savage
Petitioner's Exhibit 21	Licensure of Glenn Savage (Breath Alcohol)
Petitioner's Exhibit 22	Intoxident Report for accuracy checks done on instruments at Vermilion Country Sheriff's office
Petitioner's Exhibit 23	ISP Directive ROC-002
Petitioner's Exhibit 24	Garza cooler with beers (stipulation to admission)
Petitioner's Exhibit 25	Demonstrative Exhibit - John Wetstein Notes
Petitioner's Exhibit 26	Westville map - demonstrative
<u>Respondent's Exhibits</u>	
Respondent's Exhibit 1	Illinois Administrative Code, 20 IL ADC 1286
Respondent's Exhibit 2	Garza performance evaluations 4/16/13 - 8/21/17
Respondent's Exhibit 3	Illinois State Police Directive OPS-002, weapons discharge, deadly force investigations
Respondent's Exhibit 4	Decision in Matter of Trooper William Burge, Docket No. 94-1; Decision in Matter of Special Agent Lance Dillon, Docket No. 01-2; Decision in Matter of Trooper Jason Blessing, Docket No. 03-7; Decision, settlement, complaint in Matter of Trooper Chad Martinez, Docket No. 05-12; Decision, Settlement Agreement in Matter of Special Agent Timothy Brown, Docket No. 11-5; Negotiated Letter of Reprimand for Special Agent Lou Houston; Decision, Joint Motion, Settlement Agreement in Matter of Master Sergeant Chadd Brody, Docket No. 13-8.
Respondent's Exhibit 5	Patient discharge instructions for Garza

Respondent's Exhibit 6      Order to Expunge and Impound criminal records

Respondent's Exhibit 7      Division of Internal Affairs Supplemental Report re: Garza

## **II. SUMMARY OF EVIDENCE**

The following is a review of the evidence admitted in this case. This review does not include a recitation of all of the evidence presented in the case and is not intended to be an all-inclusive summary of the evidence. The Hearing Officer did strive to summarize all significant evidence in as fair and balanced a manner as possible. The review of the evidence is intended to serve as a guide for the basis and understanding of the recommended findings and conclusions of law of the Hearing Officer. The Hearing Officer has specifically considered all of the testimony and exhibits introduced in this case and the arguments, both written and oral, of the attorneys on behalf of the parties. The fact that some of the specifics of the testimony, documents and arguments are not included in this summary should not be interpreted to mean that all testimony, documents and arguments have not been fully considered by the Hearing Officer.

### **A) PETITIONER'S CASE IN CHIEF**

#### **TROOPER CODY GARZA**

Garza has been employed by the Department as a Trooper in District 5 since August, 2011. At the time of hearing he was assigned to an administrative platoon. P12-13. Prior to August, 2015 Garza had been a Trooper with the midnight platoon and handled traffic enforcement and crashes. During his career, Garza had made approximately 200 DUI arrests and has received commendations for those arrests. P13, 41. He has made thousands of "stops." P13.

On August 1, 2015, Garza attended his 10 year high school reunion and brought a cooler with 12 bottles of beer. P22-23. (Petitioner's Exhibit 24, p. 78). While at the reunion, he drank two of the beers (P24-25) and left about two hours after his arrival with his classmates, Shane

Arrasmith, (hereinafter "Arrasmith"), Oakley Sapp (hereinafter "Sapp") and Cory Lynch (hereinafter "Lynch"). The four men then went to Josephine's Bar in Georgetown, Illinois, P23, where they remained for two and a half to three hours. P24. While there, Garza drank a couple of margaritas in a can type of drinks. P24-26. He said he had no beers. P24.

Garza testified he brought his portable breath test device (hereinafter "PBT") with him to the reunion. P23. He did not recall using the PBT on a woman while at Josephine's Bar. P23-24. He testified his intention was to use the device on himself if he thought he had too much to drink. P24. Garza did not have the PBT on his person at the reunion or while he was at Josephine's Bar. The PBT device was always in its case stored in the cargo area of his vehicle. P48. Garza testified that he was issued two PBT devices. He was given a state issued PBT and had another which did not have an inventory number. P41-42. The second PBT was issued to the District by the Illinois Chiefs of Police Challenge and was awarded to him because he was the highest DUI writer in the District. Garza was supposed to give recommendations to the fleet officer who was the purchaser of the equipment. P42.

Garza did not recall going to Julie's Bar after leaving Josephine's Bar. P26. At some point later that morning, Garza recalled going to Sportsman's. P26. Garza testified he did not order any beer there. Garza said someone ordered a beer for him, but he didn't drink it and gave it away. P26. Garza had an interaction with Frederick Stanford while in the bathroom of Sportsman's (P57) Garza testified Stanford tried to sell him cocaine while they were in the restroom. P57,72. Garza told Stanford to flush the cocaine down the toilet. P58. Garza said Stanford flushed what was in his hand. P72. He told Stanford he was a police officer. P99. They went their separate ways. P58. Garza commenced talking to friends. P59. Garza did not believe people were leaving the bar at that time. P58. Stanford later approached Garza to have a

conversation. P59. Garza told Stanford he wanted to be left alone. Garza called the police. P59. They showed up at closing time. P59. Two officers came into the bar. P59. Garza wanted to report to them what had just occurred with Stanford. P66. Two officers, Joshua Brown (hereinafter "Brown") and Andrew Nickle (hereinafter "Nickle") arrived (Garza learned their names later). P60. Garza attempted to greet Brown at the door to let them know what was going on. P61. Garza testified to Brown saying "everyone needs to get the fuck out." P60,61. Garza did not recall using profanity with Brown and did not recall the exchange being heated or approaching Stanford. P63. Garza told Brown that his behavior was the reason why people didn't like cops lately. P61. Garza also told Nickle he was a dirty cop because he fist bumped Stanford who attempt to sell him cocaine. P87. Garza denied using any profanity with Brown. P63. While at Sportsman's, Garza did not recall searching Stanford or Arrasmith holding Stanford's possessions. P63. Garza denied seeing or approaching Stanford in the parking lot while he was in his vehicle. P64. Garza did not attempt to arrest Standard. P65. He did not place hands on Stanford. P66.

Garza was at Sportsman's at approximately 3 a.m.; then Garza and Sapp went to the Steak n Shake restaurant in Danville. P27,47. Garza originally left the bar in Sapp's vehicle but came back a few moments later and got his own vehicle. P65. He drove his own vehicle to Steak n Shake. P47,64. When Garza and Sapp arrived at the Steak n Shake, they attempted to enter the lobby which was closed. P48. A restaurant employee motioned to Garza to go to the drive-thru to order. P48. Garza did not get back into his car to go through the drive-thru. P48. Petitioner's Exhibit 10 showed where Garza's car was parked. P76,77. When Garza was standing at the menu board (Garza said without a camera he would not have been seen at the menu board. P89,90), a vehicle pulled up to go through the drive-thru which he believed

contained four occupants. P48,49,50, 52. A man, later identified as Casey Mason (hereinafter "Mason") got out of his car, P49, and exchanged words with Garza. Mason was not initially angry or upset, P50, and returned to his car. Garza told Mason the drive-thru speaker was not broken, and he was trying to order food. P50-51. Mason was then angry and upset and wanted Garza to move. P52. Mason approached Garza with clenched fists. P52. Garza took out his badge, saying it was in an attempt to calm Mason down. P52,55,56. Garza continued to believe there were four people in the car. P52. Mason responded "I don't give a fuck about that badge." P55. Garza did not recall using profanity. P57. Mason then physically assaulted Garza striking him so hard that Garza landed on his side and hit his head on the pavement. P53. At the time, Garza was attempting to put his badge away P52-53 and was not yet reaching for his firearm. P53. Garza understood showing his badge could have been deemed a show of authority. P56. Garza later learned that he struck the ground so hard that his pocket knife and keys came out of his pocket. P68-69. After Garza got up from the pavement, Mason struck him a second time when Garza was reaching for his firearm. P54. Garza believed showing his firearm would end the attack. P68. Mason ultimately got ahold of Garza's gun (not a state issued firearm, P56). Garza testified he did not know whether Mason pointed the gun at him as he was blacked out. He said he saw Mason walking away. P70. He gave him commands to put the weapon down and that Mason turned toward him as he walked away. P70. Garza said as Mason was walking away he didn't know if he had been struck by a bullet. P71. He said nothing to the Danville Police about Mason perhaps having been hit by a bullet because it became apparent Mason was not injured. P71. He said at one point he thought he had hit Mason with one of two shots fired. P70. Garza testified Mason was over the top of him when the fight for the gun was going on. P71. Garza said there was a possibility that he could have walked away from Mason after the

first encounter, but during the second encounter he stated Mason could have attacked him if he walked away. P50-55, 68-70. Garza believed he was outnumbered. P54. Garza testified he drew his firearm after being physically assaulted. P52.

When a Danville police officer arrived at the Steak n Shake, Garza did not tell him about shots being fired as he assumed someone else had informed the officer by calling 9-1-1. P56. At approximately 4 a.m., Garza was taken to the Danville Public Safety Building. P27-28. He was patted down. P28. He had chewing tobacco which he said he used. P28. He also said he had a bottle of water. P29-30. At approximately 7 a.m., Danville Sergeant Josh Campbell (Hereinafter "Campbell") instructed Garza to follow him to a different room for a breath test with a standard Intoxilyzer which Garza believed was ordered by the Department. P32,85-86. Garza said the breath test was voluntary but at the time he believed he had no choice. P85,86. Garza testified to taking a breath test around 7 a.m. P29. Before the test, P32, he did not rinse his mouth out with water. P32. Garza testified to being familiar with the use of breathalyzer devices, P35,36,41, and was trained in their use. P41. He knew the difference between breath and mouth alcohol. P36. He said intoxicated people don't always think they are intoxicated. P39. Garza testified to having two state issued PBTs, one with an inventory number. P41. He was unsure regarding the other. He said a PBT was awarded to him as an award relating to a contest due to the number of DUI arrests he had. P42. Garza said he was aware that if a person throws up or drinks anything a 20 minute observation has to again occur before a breath test is admissible. P44. Garza was a certified control and arrest tactics instructor. P44. His training included training in the use of deadly force. P46,47. He worked out regularly. P47. Garza testified he vomited 5-10 minutes before the breath test and twice thereafter. P31-32. He said he vomited 3 times. P30. Garza did not tell anyone he vomited before the breathalyzer test which was

performed by a Vermilion County officer. P33. He said he was trying to be cooperative. P33. After the test, Garza returned to the original room, and no one had removed or cleaned the garbage can in which he vomited. P34. He was not informed of the result of his breath test. P33. He believed some photos were taken of his injuries after the breath test. P34.

During his administrative interview with the Department's Division of Internal Investigations ("DII"), Garza told investigator he pulled his weapon at the Steak n Shake to display and give commands to Mason, and he never reached for his knife. P68-69. He stated he did not use his Department issued PBT on a woman at Josephine's Bar. P72-73,98. Garza said his PBT keeps records of 5 tests, a date, a time, and a subject sample and that he would have no reason to lie about giving a PBT test at the bar, knowing there was a record. P73. He said if witnesses reported him using a PBT at the bar they were misinformed or didn't properly see what was going on. P73. He did not search Stanford while at Sportsman's or tell him he was with the Department. P98-99. He did not go to Julie's Bar. P98. Garza did not believe he was intoxicated at the time of the altercation with Mason. P99. Garza said the Danville Police Department did not ask him about his consumption of alcohol. P81. He did not tell them where he had been prior to Steak n Shake. P82. He said he was truthful with DII. P98.

Garza acknowledged that when Mason approached him the second time he could have backed off and wished he had. P52-53. He acknowledged his actions at Steak n Shake did not leave a good impression. P62. Newspaper articles were published. P63. Garza believed that people in the Georgetown, Illinois area did not like the State Police and that they did not like his dad, also a police officer who made a lot of arrests. P67. Garza identified his 2014 physical fitness inventory and said he was not 170 pounds at the time of the incident. P74,75. Garza testified that during the entirety of the night he had 2 beers from his cooler and 2 Bud Light



Margaritas at a bar in Georgetown. He said someone purchased him a beer and he gave it away.

P79. He said if he consumed anything further he does not remember it. P80.

Garza said he brought his PBT with him that night to check himself in case he felt too intoxicated to drive. P80. He said it is possible to be over the legal limit of .08 and still feel able to drive. P80.

Garza had his firearm on his person the entire night. P88. Garza said his PBT was in a case in the cargo area of his vehicle the entire night. P88.

#### FREDERICK STANFORD

Frederick Stanford ("Stanford") lived in Danville, Illinois. He probably went to Sportsman's at least once per month. P102. He said prior to going to Sportsman's he had been at a friend's bar in Danville, Deuces. P115. He said he had not drank much. P116. He said he stopped at Sportsman's to use the bathroom. P116. Stanford vaguely recalled being at Sportsman's on August 2, 2015, at about closing time. P102. He said he and another man were in the restroom at about closing time when Garza knocked on the door and asked what they were doing in there. P103-104. Stanford let him in after the other guy was done. P104. Stanford and Garza exited the restroom. P105. Stanford said he did not recall what was said between the two of them. P105. "I can't recall verbatim what he said." P105. He said they went near the pool table. P106. Stanford stated Garza searched him for drugs after identifying himself as a State Trooper. P106-107. During the search, Stanford did not recall anything falling out of his waistband. P108. He said Garza took items out of his pockets and gave them to Garza's friend, P108, who held the items while the search continued. P108.

After the search, at approximately 3:30 a.m., Stanford testified the bartenders told them they had to leave. P109. Stanford said Garza informed him he could not leave because he was

going to call his superiors. P109. Stanford testified he heard Garza tell the officers upon arrival that he wanted him arrested because he had narcotics on him. P109. He said he tried to leave but Garza pretty much told him he couldn't leave. Garza didn't put his hands on him. P111. He said Garza told the officers to arrest Stanford because he possessed narcotics. P110. Stanford denied having drugs. P110. The officer search Stanford. P111. Stanford then left the bar. P111. Garza went to Stanford's car and was "talking crap." Stanford believed he fist bumped a police officer who had a cleft lip. P111-112,125. Stanford testified that while in the parking lot, Garza told him he was going to follow him home, and Stanford told Garza where he lived. At the time, Garza appeared intoxicated. P112-113,115. He said "drunk knows a drunk." P115. Stanford said his sole purpose of being at Sportsman's was to use the bathroom. P117.

On cross-examination, Stanford testified he drank one beer at the Deuces tavern in Danville, Illinois. He was there from 11:30 p.m. on August 1, 2015 until he arrived at the Sportsman's Inn bar where he went to use the restroom. P115-116. Stanford stated he was in the locked restroom with another man, and after being asked by Garza what he was doing in there Stanford replied "we are doing our drugs." P118-119. He said in fact he wasn't doing drugs. P118. Garza later entered the restroom and said "where's the dope?" He then identified himself as a State Trooper. P118-119. Stanford denied showing Garza a baggy of cocaine or flushing it down the toilet. P119. Stanford said Garza searched him near the pool table area in the bar, and Stanford had no problem with that because of his statement the he was doing drugs in the restroom. P122,127-128. Stanford said he told DII that he said something like he withdrew all of his statements. P120. He said he didn't want Garza to get in trouble. P120.

While in the parking lot hear Sportsman's, Stanford stated Garza was walking in the same direction because his truck was parked near Stanford's vehicle. P127. He said Garza told

him he was going to follow him. P123. Stanford told Garza he was a sex offender, and Garza would know where he lived. Stanford testified he gave Garza his address. P127,133. He said he and Garza were not being nice to each other. P132,134. Stanford has prior felony convictions for possession of cocaine (2000) and aggravated criminal sexual assaults (2002). P124. Stanford said he wasn't sure whether he told DII that Garza never touched him. P126,127. He said he had no problem with Garza searching him. P127. He said being searched may have had something to do with saying he was using drugs, he guessed. P128. While in the bathroom, Stanford didn't know Garza had a gun. P129. Stanford said several people searched him that night. P133. Stanford said Garza searched him, his pockets and waistband, and his legs and socks. P136. Stanford said Garza told officers he was an undercover officer making a controlled bust. P137.

#### OFFICER JOSHUA BROWN

For the previous 16 years, Brown had been a police officer with the Village of Westville. P140. He had recently become a full-time police officer P140, having been a part-time police officer since 2001, P165, 166, for different agencies. He had worked many Friday and Saturday night shifts P141. Brown had responded to calls at Sportsman's before August 2, 2015, typically for people not leaving, drinking too much, fights and domestic incidents. P141-142. He had experience with and recognized intoxicated individuals. P142. On August 2, 2015, Brown was called to Sportsman's because a bartender was complaining that patrons were refusing to leave. P142. He and Andrew Nickle, a Village of Belgium police officer in plain clothes, arrived, P144. Brown, who was wearing his uniform and duty belt, saw and heard Garza on the phone stating the police needed to get there right now. Brown identified himself as a police officer P145. Brown said Garza continued to talk for a period of time (30 seconds to 2 minutes) and

then put down his phone P145-146. Brown told him he had to leave P143, 145, 146. Garza identified himself as a Trooper. Garza did not produce a badge or law enforcement credentials. P147. Garza produced his driver's license. P147. Brown said he had asked Garza to leave 2 or 3 times. P147.

Garza told Brown that a black male had approached him in the bathroom and tried to sell him cocaine for \$20.00. Brown stated he was not aware that Stanford made a statement that he was doing drugs in the restroom. P179. Brown saw a black male, who he previously knew as Stanford, with his hands on the bar defensively saying he did not have anything. P147. Garza was in close proximity. P147. Brown spoke to Stanford. Brown said Stanford allowed him to pat him down and Stanford was taking things out of his pocket. Brown patted him down on the outside of his pants and waistband and found no contraband. P148. Brown stated he had no reason to detain him further. P148-149. Brown asked Stanford if he wanted to pursue anything with respect to Garza patting him down, which Brown thought was inappropriate, and Stanford said "no" and said he didn't have any issues with it. P149. Brown asked Garza and Stanford to leave the bar. P147-149. Brown said Garza appeared intoxicated – was slurring his speech and swaying. P149-150. When asked to leave, Garza stated that was bullshit and he must be a dirty cop. At that time Brown said he had asked Garza to leave 5 to 6 times. P151. Brown believes Garza was intoxicated because he had slurred speech, glassy eyes and exaggerated mannerisms. P150.

Brown said Garza left shortly after Stanford left. P152. He said he may have told Garza if he did not leave he would be arrested. P152. He saw no one fist bump Stanford. P152. He said he hung back in the bar after Garza left and then received a radio call to the parking lot. P153. Brown testified that when Garza was in the parking lot, Stanford was in his car and Garza was

preventing Stanford from leaving. P153. He said Garza was outside Stanford's car telling him not to leave. P153. He said he could not hear what they were saying. P153. Brown said Stanford said nothing happened. P154. He asked Stanford if he wanted to pursue charges and Stanford said "no". P154. Brown estimated he asked Garza to leave 30 times. P154. Brown said Garza argued, said this was a "bunch of fucking bullshit" and that he could not throw him out of the Dollar General parking lot. P155. He said Garza walked over to his vehicle. P155. Brown told Garza that it would be in his best interests not to get into his vehicle and drive because he thought he was a DUI. P155-156. Brown told Garza if he drove off the lot he would be arrested for DUI. P156. Brown said Garza's friend, Arrasmith, persuaded Garza to get in another vehicle. P156. Garza left with a friend. P157. Brown testified the only reason Garza was not arrested was because he was a Trooper. P157. When Brown was with Stanford and Garza in the Sportsman's Inn Bar parking lot, he never heard Garza threaten Stanford by stating he was going to follow him home or that Stanford was concerned about his loved ones. P178. Brown never saw Garza touch Stanford. P193. After discussing the incident with his Captain, P157, Brown called ISP District 10 to complain about his interactions with Garza. P157-158. He said Garza was disrespectful and uncooperative. P158. Brown said his past interactions with the Illinois State Police had been very professional and positive. P159. He said he still respected Illinois State Police after the incident. P160. He said he went past Sportsman's 10 or 15 minutes after the parking lot incidence and Garza's vehicle was gone. P162.

On cross examination, Brown testified he was not aware that Garza made a 9-1-1 call from Sportsman's concerning a suspected drug dealer P168-169, 172. Garza had been on the phone when Brown arrived at Sportsman's. P169. Brown said he didn't know Garza was on the phone with police P169-170. He had listened to him on the phone for 1.5 minutes. P170. Brown

did not know that Stanford had a prior conviction for possession of cocaine. P173-174 or was a sex offender. P178. He had a run in or two with him in the past. P173. Brown denied ever stating that "everybody needed to get the fuck out". P170-171. Brown admitted that he only did a cursory pat down of Stanford and never searched his pockets or waistband. P174. He was searching for weapons, not drugs. P177. Brown agreed that it would have been improper for Garza to make an off-duty arrest as on-duty officers should have been called. P175. Brown said he was unaware of Stanford having said they were doing drugs in the bathroom. P174. He said he would not have made an arrest under similar circumstances. P175 and he would call the police P175.

Brown said he would not instruct someone to dispose of cocaine. P176. Brown believes that if an underage drinker is instructed to dump out alcohol without anticipating criminal charges or to destroy a marijuana blunt, he would not consider that a case of destruction of evidence or the situation to be an investigation. P176-177.

Brown had not known Garza before the incident, P167, 179. He said Garza's father, Master Sergeant Garza, was a man who did his job. P167-168 Brown said he cussed when he was pleading with Garza to get out of the bar. P185-186. Brown said he didn't do a full search of Stanford because his probable cause would have been coming from an intoxicated individual. P192.

#### OFFICER ANDREW NICKLE

Nickle had been a police officer for about three years. P197. He had been employed full-time with the Georgetown Police Department for 4 ½ months P211 and part-time with the Belgium, Batlin and Westville departments. P197-198, 211.

On August 2, 2015, Nickle, who was not in uniform, was riding with Brown to gain experience. When they entered Sportsman's, Garza was on the phone telling someone to send the police. P199. Nickle speculated Garza was calling 9-1-1. P212. Nickle said he heard Brown say he could get off the phone but he stayed on the phone P199 and stared at Officer Brown, P200, for a minute P213. He said Garza, his friend and two bartenders were there. P199. Nickle stated a bartender told him that she saw Garza's badge and he was a State Trooper. P201. When Brown asked for Garza's credentials, he was handed a driver's license. P201. Nickle said he asked for Garza's police credentials and Garza did not produce them. P208. Garza told him that Stanford had tried to sell him cocaine for \$20.00 while they were in the restroom. P201, 213, 214. Brown patted down Stanford. P201. Nickle did not. P215. He did not know whether Garza previously searched Stanford. P201. Brown asked Garza to leave the bar approximately 20 times. P202. Nickle said Stanford was asking to leave, he then left and Garza was mad that Brown let Stanford leave and called Brown "a bad cop". P202. He said Garza left the bar after Brown continuously asked him to leave. P202.

An Officer Boswell showed up from the Tilton Police Department. P202. Boswell and Nickle went outside to run Garza's plate to make sure he was a State police officer. P202. Nickle and Tilton Police Officer Boswell were in the bar's parking lot when they saw Garza standing at Stanford's car window yelling at him. P203. Boswell contacted Brown via radio and Brown went outside and told Garza approximately 10 more times to leave. P204. Garza was upset because Brown was not taking more initiative to detain Stanford. P205. Garza called Brown a bad or dirty cop. P206. Nickle said Stanford wanted help leaving the parking lot and said Garza was preventing him from leaving verbally. P203. Nickle did not fist bump Stanford. P202.

On cross examination, Nickle stated that when he arrived at Sportsman's that morning, he was not aware that Garza had called 9-1-1 to report an individual had tried to sell him drugs. P212. He was unaware of past felony convictions of Stanford. Nickle did not run a criminal history check on Stanford. P214. Garza told Brown and Nickle that Stanford tried to sell him cocaine in the restroom. P214. Nickle testified he would not have faulted Garza for calling the police because he had been drinking. P218. Nickle stated he did not search Stanford because he was not at full capacity as a police officer because he was out of uniform. P218.

Nickle never heard Stanford voice any concerns because Garza stated he was going to follow him home. He never heard Stanford say anything about being threatened by Garza. P220. Nickle said Garza was acting irate and irrational P205 and was using profanity. He observed Garza as intoxicated (slurred speech, unsteady on feet, blank stares, not following instructions). P206. He said that Arrasmith said that Brown could not throw them out of the Dollar General parking lot. P207. Nickle did not know Garza or Garza's father. P208-209.

He said 9-1-1 calls could not be heard in the squad. P212. He was unaware Garza had called 9-1-1 to report a person attempting to sell him drugs. P212.

#### CORISSA MILLER

Corissa Miller (hereinafter "Miller") is a school teacher in Indiana and a weekend bartender at Sportsman's for the previous seven years. P226. Miller states that at approximately 2:00 a.m. on August 2, 2015, Garza arrived at Sportsman's and ordered a Bud Light and may have ordered a drink for a friend. P228, 229. She did not recognize Garza. P228. She said it was a busy night at the bar. P230. She asked Garza for his identification, P230, and vaguely remembered seeing some type of badge. P240. Garza stood near the bar. P231. He was casually talking to other patrons but nothing struck her as odd. P232. She said he left to go to the



bathroom about 2:45 a.m. and left a beer on the bar that was not empty. P232, 233. Near closing time, Garza asked Miller if he could use the restroom and left his beer at the bar. P232-233. She later saw Garza standing outside the restroom speaking with an African-American gentleman. P236. She asked people in the bar to leave. P237. She said she initially observed nothing tense about their conversation. P238. She said the conversation became tense after the doors were shut. P238, 239. Then she called the police. P264. She did not see Garza give any of Sanford's belongings to his friend, Arrasmith. P266. Garza was implying that Stanford had drugs on him and had been doing a drug deal in the restroom. P239, 262. She told them to leave. P239. She did not know Garza was a police officer. P240. She did not hear Stanford say he had been doing drugs. P262.

Miller said Stanford kept saying "dude, pat me down.". She said he pulled on his waistband (he was wearing sports shorts) and said Garza could look. P240. She said Garza was between Stanford and the door. P243. Miller recalls seeing Stanford emptying his pockets and pulling out his waistband and saying "look, I don't have anything on me." P240. She did not see anything fall from Stanford's waistband P243 or a redheaded gentleman holding Stanford's possessions. P243, 244. Miller testified that she knew for sure she called 9-1-1 two times P244 and Brown, Nickle and an unknown officer appeared. P246. She did not know whether Garza was on the phone at the time. P247. After Garza told Brown he was a police officer, Brown replied basically I don't care if you're an officer, you're off duty and have been drinking and you shouldn't be in the bar. She said Officer Brown interacted with Stanford and Stanford left. P248. She said maybe 5 minutes passed from the officer showing up and Garza leaving. P248. She said Stanford emptied his pockets and pulled on his waist band. She did not see Brown search Stanford. P248. Miller did not hear Garza using profanity when speaking to Brown. P249, 250 or

call him a dirty cop. P250. She said Garza described a drug deal and Officer Brown indicated he didn't care and it was time to go home. P249. Miller said Garza was not happy about the situation. P253. She said Garza was concerned about Stanford and perhaps rightfully so. P253. Miller said Garza was upset when Brown arrived. P253.

On cross-examination, Miller testified she was required to take online courses to be able to determine whether she should serve intoxicated individuals. P255. When Garza arrived around 2:15 a.m., she did not believe he was intoxicated. P257. When interviewed by DII she told investigators that Garza was not intoxicated and she has that same belief today. P257. She would not have served him had he been intoxicated. P257. After Brown allowed Stanford to leave the bar, Miller heard the conversation between Garza and Brown. Garza told Brown he was a police officer and Brown replied he would handle it since he was the officer on duty. P270. She said there was no profanity between Garza and Brown. P269. Garza then left the bar and was followed by the other police officers. P270-271. Miller had no knowledge of what later occurred outside of the bar. P270-271. She did not know that Garza had made a 9-1-1 call. P267.

#### OFFICER JOHN MCFARLAND

Officer John McFarland (hereinafter "McFarland") has been a patrol officer with the Danville Police Department since July 2005. P272. On August 2, 2015, he was dispatched to the Steak n Shake for a report of a subject with a gun. P273-274. He was given further information of another call that an off-duty State Trooper was on scene and had been disarmed of his service weapon. P273. He did not know shots had been fired. P282. Upon arriving, he said Garza and another individual (Oakley Sapp) approached him. P274. McFarland spoke to Garza who explained how he was disarmed of his service weapon. McFarland said Garza appeared intoxicated – his eyes were red and glassy and his posture was consistent with being intoxicated.

P275. He said he had face to face contact between 3-5 minutes and could clearly see Garza. P277. Garza did not complain of injuries. P277. Garza stated he was unable to get into the dining area of the restaurant and had tried to order from the drive-up call box. P273. An individual approached him and told him to get out of the way and pushed Garza. P275. As he was staggering backwards, the subject struck him in the head and took his gun from him. P276. Garza did not tell him his gun discharged. P275-276. McFarland did not ask Garza whether a firearm had been discharged. P287. Garza told him he had driven to Steak n Shake. P277. McFarland estimates he has made 50 DUI arrests during his 12 years of experience. P277, 278. He transported Garza to the Public Safety Building and offered him water or a Pepsi. P279. He escorted Garza to an interview room and he did not recall if he took his personal property. P279-280. He had no further contact with Garza. P281. He understood Casey Mason brought Garza's firearm to the Danville Public Safety Building. P279.

On cross-examination, McFarland admitted that glassy and red eyes are typical signs of fatigue. P283. He was not aware if those symptoms or swaying could also be symptoms of a concussion. P283. McFarland did not include any information that Garza was intoxicated or had glassy and red eyes in his police report. P284. He stated Garza was not brought to the Danville Police Department because of a suspected DUI. P286. He was not investigating a criminal activity. P284. He said he took Garza to the Danville Police Department because he was to be interviewed by the Criminal Investigations Division. P285.

#### OFFICER JOHN DUNAVAN

For the previous 13 years, John Dunavan (hereinafter "Dunavan") had been a patrol officer with the Danville Police Department. He was called to the Steak n Shake on August 2, 2015, where he took photographs around Steak n Shake (drive through area, 40 caliber casing,

pocket knife. P291) and collected evidence (Petitioner's Exhibit 6). P289-290. Dunavan testified a knife at the scene was open. P297. He said there were 8 live rounds in Garza's firearm and one shell casing. P298. The capacity in the gun was 10. P298. He could not tell how many shots were fired at Steak N Shake. P298. He could not say when the round that was shot that was still in the chamber was fired. P299. A shell casing was found on the ground near the drive through. P300. Dunavan also took photographs at the Public Safety Building. P290. He took photographs of Garza, including his right index finger injury and an abrasion on his left elbow. P291-292. Garza pointed out his injuries. P299. Garza did not report a concussion or a head injury. P292, 296, 297.

Dunavan was at lunch when he heard Casey Mason was at the Danville Public Safety Building. He went there and held Mason and his female driver at gunpoint. P293. Mason admitted he had thrown the weapon out the window, Dunavan recovered the weapon which was placed into evidence P294 and he was extremely scared, shook up and shaking. P293-294

#### SERGEANT JOSH CAMPBELL

Campbell had been employed with the Danville Police Department for 17 years and had held the rank of Sergeant for the last 10 years. He was an investigations supervisor. P301, 302. On August 2, 2015, he was called on duty to assist in an investigation. He arrived at the Public Safety Building at approximately 6:00 a.m. and went to interview room 121 to see Garza. P303. He said Garza pretty much stayed in the same interview room. P303. Campbell took photographs of Garza and his possessions (Petitioner's Group Exhibit 7). P307-308. He took a picture of Garza's badge. P307. (Petitioner's Exhibit 8). Petitioner's Exhibit 9 was Garza's book-in photo from August 2, 2005, P305, which the Vermillion County Sheriff's Office took. P305. The photo was taken in the ordinary course of business. P305.

Campbell stated Garza was not brought in for any DUI related charges. P309. He asked him to take a breath test because it might be relevant to the Steak n Shake incident. P309. Around 7:00 a.m., Campbell took Garza to another room for the test which Garza voluntarily submitted to and acted very professionally. P310. Campbell testified that the standard 20-minute observation period was not done for Garza because the test was not DUI related. P312. At the time Campbell took Garza for the breath test, the camera inside the interview room was not recording. P312. Garza did not tell Campbell he vomited before the test. P313, 315. Campbell smelled no vomit. P313. He saw no residue or vomit splatter. P313. He smelled no vomit in the interview room. P313. Campbell didn't know whether Garza had food, drink or water before the breath test. P313. He did not remember smelling any tobacco. P314. Campbell said if he was told Garza had vomited before the breath test, he would have put it in his report. P346.

Campbell observed the entire breath test, P314, and the result was .153. P316. He then escorted Garza back to the interview room and took photographs of his injuries. P316-317. Garza had some scrapes on the palm of his right hand, a blood blister on his right hand index finger and redness and a visible bump near his right temple. P317. Campbell felt a bump P317, 338 above a right temple. P338-339. Campbell was referred to photographs of a trash can in the corner of the interview room. Based on the photos, he could not determine if someone had thrown up in the can. P318. On other occasions, he had been in the Public Safety Building when someone had thrown up in the trash can and sometimes he could smell the aroma, other times not. P320. Approximately two hours after the breath test, he saw and heard through the monitor Garza vomiting into the garbage can at about 7:30 p.m. P321, 329. He said his interview with Garza lasted 30 minutes. P322

During his criminal interview, Garza said there was an altercation at the drive-thru with an individual, the altercation became physical and some shots were fired. P323. Garza did not answer the question of where he had been prior to Steak n Shake. P323. Garza had not said how he got to Steak n Shake. P323. He didn't say he had driven there. P324. Garza stated he was standing at the drive-thru order speaker when Mason (male black passenger) got out of a vehicle and asked whether the machine was working. P324-325. Mason returned to his vehicle and then again approached Garza about ten seconds later. P325. Garza displayed his badge. P325. He reports Garza indicating he flashed his badge to make sure Mason knew he was the police. P328. Mason pushed Garza. P325-326. Garza reported putting his hands up. P325-326. Mason indicated he did not care who Garza was as Garza was putting his wallet back. Mason told Garza not to grab anything and pushed Garza again at which time the gun discharged. P326. Campbell doesn't recall Garza indicating he warned Mason that he was reaching for a firearm. P326. Garza reported Campbell saying that Casey pushed him while he was reaching for his firearm and may have lost his gun trying to brace himself with his right hand. P339. Campbell reported Garza indicating he assumed he had hit Mason, P328, but he didn't have time to aim and didn't remember anything about a second shot or the gun being taken from him. P327. He said Casey Mason took the gun to the Public Safety Building. P327.

Campbell was later asked to obtain 9-1-1 calls from August 1 and 2, 2015. He received five calls by e-mail. P329. None of the calls were made by Garza from Sportsman's. P329. Garza was given a Miranda warning and his statements were voluntary. P330. The breath test given Garza was a "quick test" not for purposes of DUI. P335-336. Quick tests are done for things like domestic relations matters. P337. He said Garza was in the interview room 7-8 hours. P351.

Campbell said the interview room had an audio recording device. P331. He said the device had to be activated. P332. He said there is a computer hooked up to the camera. He said the computer and audio can be turned on so that an interview can be watched and listened to without recording actually being activated. P332. The monitor can be used to hear and see if not recording. P343. The device is in the room next door. P343.

On cross-examination, Campbell stated he saw Garza vomit at 7:35 a.m. while in the interview room and the recorder had not been activated at any point prior to that time. P332. If Garza had vomited 10 to 15 minutes before his breath tests, that would not have been heard via the recorder. P332. No recording was being made. No one was assigned to constantly look at the video to monitor what Garza was doing in the interview room because it was not a DUI arrest. P333.

Campbell testified he had made DUI arrests in the past and was familiar with Illinois Administrative Code ("IAC") procedures. P333. He was familiar with the requirements of a 20-minute observation period. P333. He agreed the arresting officer is supposed to be in the same room with the suspect for a continuous constant observation. P334. He testified that if Garza vomited 10 to 15 minutes before the breath test, it could have been clear and odorless. P334. He agreed no one had removed the garbage can or inspected it prior to the breath test. P334-335. He agreed vomit could be odorless. P335. He acknowledged Garza was not observed for 20 minutes prior to the breath test. P335.

Campbell stated that based upon his interviews of Mason and Garza, there was never any indication that a knife was used in the altercation. P340. Campbell was aware that Mason was currently in jail for a felony gun charge, occurring after the 2015 incident (P343), a weapons offense by a convicted felon. P341. Campbell said he had dealt with Casey Mason before – with

respect to warrant arrests and domestic matters. P340. Campbell said Garza was charged with reckless discharge of a firearm but charges were dismissed. P349.

#### SERGEANT KEVIN MASKELL

Sergeant Kevin Maskell (hereinafter "Maskell") had been employed with the Vermillion County Sheriff's Office for 23 years. P352. He is a sergeant of 19 years and a Certified Breath Analysis Operator. See Petitioner's Exhibit 11 for copy of Certification. Maskell had 40 hours of initial training. P356. He said the Intoxilyzer 500 was an approved evidential machine. P357. He had used the Intoxilyzer 500 several times before. P357. Maskell has been conducting breath tests for 19 years and estimates he has performed 500 or 600 tests during his career. P356, 358. The steps for conducting a test typically were the entry into the machine of data found on a driver's license, entry of ticket information, zeroing the machine out, inserting the mouth piece into the unit, giving the hand piece to the suspect and having them blow continuously until told to stop. P359. He performed Garza's breath test on August 2, 2015, P359, after being requested to do so by Campbell. P358-359. The test occurred at 6:59 a.m. and had a result of .153 (Petitioner's Exhibit 13). The test was conducted at the Public Safety Building.

Maskell prepared a breath analysis log (Petitioner's Exhibit 12) and the time that Garza was first observed column was blank (Petitioner's Exhibit 12). The log contained the operator's name, Garza's name, the date of August 2. P361. He said it usually takes between 5 and 6 seconds of continuous blowing in order for the results to be shown. P359. Then, a result is shown and printed out. P360. A result is written in the log book. P360. He said these steps were taken for Garza. P360. He states Garza was not being arrested on a DUI charge and he did not need the 20-minute observation period. P365. Garza did not report that he vomited before the test. P366. Maskell states that if the subject vomits before the test, they could have alcohol in the



mouth and it could definitely result in an incorrect reading that it should not or would not ordinarily have. P367-368. He had never had any problems with the machine. P368. He had no knowledge of the machine giving a result higher than the subjects actual BAC. P368. He had no reason to believe the machine was not operating correctly at the time of the Garza test. P368, 369. .08 or over is considered under the influence. P368. He testified that the fact a test is a quick test versus a normal DUI test did not affect the actual functioning of the machine. P380. It's just less information is placed in the machine. P380. A quick test will still detect the presence of blood or breath alcohol in someone's system or breath alcohol. P380. He said if there is the presence of mouth alcohol the machine will show insufficient breath sample. P380. He did not smell tobacco product on his breath. P380.

The EC/IR-II is referred to as the Intoxilyzer. P381. He said the difference between a DUI test and a quick test is the larger amount of personal information inserted which is not needed because the purpose of a quick test is to ascertain whether the person had any alcohol to drink. P382. He said the same machine is used – just with more information. P382.

Petitioner's Exhibit 13 is the document that came out of the breath analysis machine containing the result for Garza. P364. The results of Garza's test were .153. P365. He did not smell vomit on Garza's breath and he was standing right next to him. P366. If he had been told Garza had vomited shortly before the test, he would have advised Campbell and let him know there needed to be an observation period. P367.

On cross-examination, Maskell testified he was familiar with the IAC as it relates to breath tests (Respondent's Exhibit 1) P372. He was referred to section 1286.310 which defines the 20-minute observation period. He states that section of the IAC mandates that in all DUI cases, the subject must be constantly observed for at least 20 minutes prior to the test to ensure

that the suspects are not putting anything in their mouths or have vomited. P373. He didn't understand why Campbell wanted him to handle the test without a 20-minute observation. P374. Campbell specifically told Maskel that the 20-minute observation period was not needed because it was not a driving under the influence of alcohol case. P375. He states quick tests are not typically used in DUI cases. P375-376 (Petitioner's Exhibit 13). The printout in a DUI case would have the driver's license information, the name, date of birth, arrest information, the officer's ticket number and the arresting officer's name. P376-377. Maskell testified the same breathalyzer machine would be used in a DUI test and quick tests but the DUI test would include more information. P381-382. He said the primary purpose of a quick test was to determine whether or not there was alcohol in a person's system. P377. Results of a quick test were not related to criminal charges. P377.

#### TROOPER GARY ANDERTON

Trooper Gardy Anderton (hereinafter "Anderton") is a 20-year veteran of the Department and is currently assigned to the Academy with the Breath Alcohol Section. P405. He is certified as a Breath Analysis Operator, Technician and Instructor. P406, 408. Anderton was shown his curriculum vitae (Petitioner's Exhibit 14), P409, and stated that he teaches classes at the Academy involving standard field sobriety testing and breath test operations. P412-413. He takes care of and maintains breath testing instruments in his assigned region. P405. He has instructed Breath Alcohol Operator Classes approximately monthly for about 15 years. P409.

Anderton was familiar with Portable Breath Tests (PBT) P412 which are non-evidential testing devices. P413. He said they are small and can be carried most places. PBTs aren't inspected as often and typically don't have flow detectors, sensors, mouth alcohol detection, etc. P413.

Anderton was shown Garza's breath test results (Petitioner's Exhibit 13). He testified in detail to the test results. P414-420. All systems checks passed. P416. Anderton had conducted a certification check on the machine used on Garza several times. P420. He believed it was a valid breath test, P420, according to rules, regulations and based on the printout (Petitioner's Exhibit 13). P420. He testified that if mouth alcohol is present, it cancels the test. P426. He said mouth alcohol is residual alcohol left in the mouth that would not be representative of what is in the blood. P423. He said the instrument detects mouth alcohol and cancels the test. P424.

He stated the 20-minute observation period is to ensure that there is no foreign substance added to the body that could be sniffed, snorted, inhaled, sprayed, injected or ingested. P427.

Anderton testified in detail about blood alcohol content ("BAC") after alcohol consumption. P432-433.

Anderton testified the quick test has less data entry, but that does not affect the actual printed out reading. P438. He said a quick test is a breath test with less data entry. P457. He was aware that Garza stated he vomited five to ten minutes before the test, and he had been sitting in the interview room for 3 hours during which he was not consuming alcohol. He does not believe any alcohol would have remained in Garza's system and the test result, .153, would have been accurate, P441-444, 447, and Garza would have been intoxicated when he took the test. P444. Anderton said accuracy checks done after Garza's test (Petitioner's Exhibit 12) indicate the testing device was functioning properly. P444-447. Anderton testified that Illinois administrative rules changed in 2015 to remove from the observation period hiccupping, coughing, burping and belching but maintaining vomiting. P449. He said if there was alcohol in the vomit, the testing instrument would have picked up the mouth alcohol and it would have been flagged. P440.

Anderton states that the FST model PBT is the instrument used by most Troopers on the road. P516. The Department did not purchase any Intoxilyzer 500 models. P516. Garza was issued both PBT devices. In 2015 a log sheet indicates the Intoxilyzer 500 was issued to Garza and an inventory sheet indicates he was also issued a FST device. P517-518. He testified the Intoxilyzer 500 model can recall the last 5 tests. P518, 519. Earlier tests are overwritten. P519. Those 5 tests were done on April 18, 2017 and were a calibration check and subject breath tests. P520-521. The Intoxilyzer was not listed in Garza's inventory. P521, 522.

On cross-examination, Anderton stated that if the Vermillion County officer had observed Garza for 20 minutes before his breath test and observed him vomiting, the breath test sequence should have been started over by having Garza rinse his oral cavity with water, then starting the 20 minute observation period over again. P450-451, 462. The IAC was referenced. P451. He testified that the 20 minute observation also applies to civil cases such as summary suspensions. P452-453. He agreed that Garza's breath test was not for the purpose of a DUI. P453. The state of Illinois has mandated procedurally that the 20 minute observation must be done before a subject is given a test in a DUI case. P455, 460. The arresting officer or breath analysis operator, at a minimum, should be in the same room with the subject for 20 minutes. P461. Anderton said in a DUI case the prosecution must prove a 20 minute observation period. P452. He said he teaches Troopers to utilize a 20 minute observation period. P456. Anderton said just because a 20 minute observation has not been done does not necessarily mean that reading is not accurate. P457. Anderton said nothing in the IAC prohibits a quick test when testing for a DUI. P458. He said the additional data gathered from a regular test is primarily to confirm identity. P458. Garza's counsel objected to Petitioner's Exhibit 13 being admitted into evidence. P463-467.

Anderton said that the Illinois State Police PBT monthly certification log dated January 15, 2015, indicates that the Intoxilyzer 500 was assigned to Garza on that date. He believes that the five tests on April 18, 2017, were used to recertify the instrument for re-issue to another officer. P523.

#### SHANE ARRASMITH

Arrasmith currently lives in Lake Park, Georgia and was Garza's high school classmate. P467. In August 2015 he attended the 10 year high school reunion. P467. He recalled that Garza brought a cooler with imported beer to the reunion and there were four to seven beers in the cooler when they left the reunion. P469-470. He said about one quarter or one-third of a 4 pound bag of ice was poured by him into the cooler at the end of the class reunion. P471. He didn't recall how much Garza drank at the reunion. P471. At approximately 10:15 p.m. Arrasmith, Garza, Sapp and Lynch went to Josephine's Bar in Georgetown. P471. Arrasmith testified he saw Garza give a breath alcohol test to a woman. P473, 474. Arrasmith said Garza told the woman she was under .08 and OK to drive. P474. After the test, Garza put the PBT back in his truck. P474. After spending about two hours at Josephine's Bar, the four men then split up with two going to Julie's Bar and the other two going to Sportsman's. P478.

Arrasmith believes Garza drank one beer at Julie's Bar. P475-476. After being at Julie's Bar for 45 to 60 minutes, Arrasmith and Garza then went to Sportsman's which was close in proximity to Julie's Bar. Arrasmith saw Garza drinking another beer while at Sportsman's. P477. He said it could have been the same beer from Julie's. P478. He was pretty sure Garza drank only beer that night. P476. He believes Garza may have given one of his beers to Cory Lynch. P478. Arrasmith recalled seeing Garza going into the restroom about 3:00 a.m. right before they were going to leave. P479. Garza exited the restroom with a man later identified as

Frederick Stanford and Arrasmith then approached Garza who told him that Stanford tried to sell him cocaine while they were in the restroom. P480. Stanford was then searched and was emptying his pockets. He put his belongings in Arrasmith's hand. P482. He believes Garza did two separate searches of Stanford. P492. He said Stanford said "go ahead and search me and he (Garza) searched him. P481, 492. He said Garza told Stanford to wait for the cops. P492. He said a bag of something fell from Stanford's waistband onto the floor. P482. Stanford picked it up and ran into the restroom stating "don't worry about it, it's gone." P482. He said Garza searched Stanford again and found nothing. P483.

Arrasmith testified police arrived after the second search. P483. He said that when the police arrived at Sportsman's he did not recall Garza being on the phone. P483. He said Garza attempted to tell them what had occurred. P484. The officer told Garza to get back and he didn't care about what Garza was saying. P484. They told Stanford he could leave and Arrasmith saw one of the officers fist bump Stanford as he was leaving. Garza told the officers he could not believe they let Stanford walk out without figuring out what was going on and he told them that Stanford tried to sell him cocaine. P486. Arrasmith said the officers stated they didn't care. P486. Arrasmith said Garza indicated he was a State Trooper. P485. He said Garza talked to the local police about 2 minutes. P487. Arrasmith and Garza then left the bar and were going to their vehicles in the parking lot. P487. Stanford said something to Garza and he replied that if he was in his jurisdiction it would have been a different story. P487. He never saw Garza tell Stanford that I'm coming for you or I'll find you. P487-488. He said local police told them to leave and told Stanford to leave. P488. He said there was a discussion about going to Steak n Shake to eat and the local officers kept yelling at them to eat. P489. Arrasmith stated that Garza and Sapp decided to go to the Steak n Shake. Arrasmith told Garza to get into Sapp's vehicle and

not to drive, P489, even though he thought Garza was physically able to do so. P495-496. He said Garza and the police officer had verbally gone back and forth. P490. Arrasmith said Garza did not appear intoxicated when he left Sportsman's. P495. He felt he could physically drive. P496. He was concerned about Garza being targeted by the police. P512.

On cross-examination Arrasmith stated in 2005 he had long red hair and a beard. P500. He testified he normally did not pay attention to how much other people were drinking, P502, but believes Garza only had a couple of beers while at the reunion. He stated that he would have noticed if Garza drank 10 to 14 beers at Josephine's or Julie's as he was in close proximity to him throughout the night and he did not believe Garza drank more than one or two beers at any one of the bars. P503-504. He said it was possible Garza never went to Julie's Bar. P504.

Arrasmith testified to Stanford denying he had done what Garza said he did. P506. Arrasmith testified that he saw what he believed to be cocaine fall from Stanford's waistband while being searched by Garza. P506. Stanford picked up the cocaine, ran past Garza to the restroom and exited stating "don't worry about it, it's gone." P507. Arrasmith heard the toilet was running and thought it had been flushed. P507. Arrasmith recalled one of the officers saying something along the line of "get the fuck out" before he and Garza left Sportsman's. P508. Arrasmith described the officers as having poor demeanors and saw one of them fist bump Stanford while they were in the bar. P509. He said Garza was upset. P509. Arrasmith and Garza were told by the officers to leave the bar four or five times, not 30 times. P510. He indicated that the officers were more concerned about getting people out of the bar than investigation. P509-510. He said the same officer fist bumped Stanford again outside. P511. He said their car was parked outside in the same area as Stanford's vehicle. P510.

## JOHN WETSTEIN

John Wetstein (hereinafter “Wetstein”) had been employed with the Department for 28 years, most of the time with the Forensic Science Command, Toxicology Section. P533, 534. Wetstein is certified by the Department to conduct tests for alcohol and drugs in biological fluids. P535. He developed training programs for the toxicology section. P534. He is recertified regularly. He has given many presentations on toxicology. P535, 536. He had performed thousands of alcohol or biological fluids testings. P537. He developed training programs for the toxicology section. His curriculum vitae was admitted into evidence. (Petitioner’s Exhibit 15). P536-537.

Wetstein received a memo from Department Attorney John Hosteny (hereinafter “Hosteny”) presenting several facts to be assumed and requesting information about Garza’s level of intoxication at different times on August 2, 2015. P539. He was also asked to provide an opinion as to how much alcohol Garza consumed the night of August 1 and early morning hours of August 2, 2015. P539-540. See Petitioner’s Exhibit 16, P539, 540.

Wetstein testified he was familiar with the term retrograde extrapolation which is a mathematical process to determine alcohol concentration levels at earlier points in time given certain assumptions. The calculations involve an elimination phase and uses metabolism ranges. P542. He said “elimination phase” is when alcohol consumption has stopped P542 and the individual’s blood alcohol concentration is dropping. After testifying about certain calculation ratios, Wetstein offered several opinions. P542-543.

Wetstein responded to Hosteny’s request in memorandum form. P541. (Petitioner’s Exhibit 17). He could not estimate Garza’s blood alcohol concentration between 1:30 a.m. and 1:45 a.m. on August 2, 2015. P544. He testified that between 3:30 a.m. and 3:45 a.m. Garza’s



blood alcohol concentration would have been between .185 to .218 grams per deciliter. His blood alcohol content at 3:52 a.m. would have been between .185 to .215. P548.

Wetstein testified that after going through further mathematical calculations, including Garza's weight being 170 to 180 pounds (P549-550), he estimates that Garza consumed between 13-18 beers the night of August 1 and early morning hours of August 2, 2015. P553, 566 (Petitioner's Exhibit 17). Wetstein testified in detail regarding his mathematical calculations to reach a conclusion regarding how many beers Garza had consumed. P551-556. Wetstein said he rounds down in his analysis – uses a conservative metabolism rate – to the subject's benefit. P568. He said he took a conservative approach with Garza. P568-569.

Wetstein said his opinion was based on alcohol consumption occurring between 8:00 p.m. and 3:15 a.m. P574. He said there could be an infinite range of possibilities with regard to drinking patterns between those hours and his opinion would remain the same. P576.

Demonstrative Exhibit 25 included Wetstein's notes regarding mathematical calculations performed during his testimony.

#### TODD SAVAGE

Todd Savage (hereinafter "Savage") had been employed and certified for 23 years as an ISP Breath Alcohol Technician. P627. He is recertified every 3 years. P628. He travels to police departments and sheriff's offices to ensure that breathalyzer instruments are accurate and working properly. P629. He also trains officers. P629. He teaches about 20 classes per year. P649. Petitioner's Exhibit 20 is Savage's Resume. Petitioner's Exhibit 21 is Savage's license to certify breathalyzer instruments and teach, his Breath Alcohol Instrument license. P631. In the past, Savage performed certification checks on the breath analysis machine at the Danville Public Safety Building. P632. He was shown Petitioner's Exhibit 22, an Intoxilyzer report for an

accuracy check on an instrument at the Vermillion County Sheriff's office. P632. Savage inspected (an accuracy check) the instrument on June 18, 2015, and the instrument was working properly. P634. He also inspected the machine on August 10, 2015, and it was working properly. P635. He expected that the machine would have been functioning properly on August 2, 2015. P635-636. He said "if it's good before and it was good after, everything in between is good." P630. He said the machine would not allow for a test if something was wrong. P636. Savage was shown Petitioner's Exhibit 12, the log for Vermillion County Sheriff's Department Intoxilyzer. He stated that according to the document, the machine was operating properly on August 2, 2015. P637, 638.

On cross-examination Savage testified that he has conducted "tens of thousands" of breath analysis tests. P639. He was familiar with the sections of the IAC which govern breath alcohol tests. P639. He stated the 20 minute observation period is to ensure that there is no mouth alcohol present when a subject blows into the instrument. If the subject vomits approximately 10 to 15 minutes prior to the alcohol test, he then needs to rinse his mouth with water and then have another 20 minute observation before blowing. P641.

When referred to Petitioner's Exhibit 12, the Intoxilyzer log, Savage testified that the section stating when Garza was first observed is blank. P645. If there had been a 20 minute observation period, the time should have been included on Petitioner's Exhibit 12. P645-646. He acknowledged that Garza was supposed to have been observed for 20 minutes prior to his breath test. Savage testified the quick tests are generally not done for DUI arrests, and those do not have a 20 minute observation period. P646, 647. He said quick tests bypass information. P646. He agreed that when somebody does a quick test, they typically don't do a 20 minute observation because it is not for a DUI. P647. He said because a test is a quick test does not affect the overall

accuracy of the test. P650. He testified the 20 minute observation period applies to both civil and criminal cases. P649.

Savage said if there was mouth alcohol present due to Garza having vomited 10 to 15 minutes before his test, the mouth alcohol would have been flagged and the test cancelled. P652, 653, 655. Savage said if a test was given and no mouth alcohol was present, he would assume a good test even if there had been no 20 minute observation. P656.

#### COLONEL JOANN JOHNSON

Colonel JoAnn Johnson (hereinafter “Johnson”) is a 28 year veteran of the ISP and had been assigned to the DII since 2010. P658. She said her DII responsibilities include being chairperson of the Disciplinary Review Board and overseeing four DII offices. P659. Johnson stated she is familiar with the ISP Rules of Conduct. P659-660 (Petitioner’s Exhibit 23). She identified Petitioner’s Exhibit 18 as a complaint against Department Member Form filed against Garza. P662, 664. Johnson testified that Count I of the Complaint alleges a violation of ROC-002 par III A.47 (Petitioner’s Exhibit 23) which states that an officer will not, while on or off duty, drive or be in physical control of a vehicle while under the influence of alcohol. Johnson testified that the Department believes that this Rule was violated because Garza went to his class reunion and then visited several bars and the Steak n Shake while he was “under the influence of alcohol to an intoxicating limit.” P665-666. She said as Illinois State Police Officers “we are held to the laws, as the general motoring public are”. She indicated that Garza being in physical control of a vehicle under the influence of alcohol is a violation of law and rules of conduct. P666.

Count II alleges a violation of Rule A.41.c, which requires officers to truthfully answer questions that are material and relevant to the investigation. Johnson believes that during Garza’s

DII administrative interview, he was untruthful when questioned about the events of that night. P667.

Count III alleges a violation of Rule A.55 which states officers will not obstruct an investigation by destroying, altering, concealing or disguising real evidence. Johnson said Garza violated that rule when a subject attempted to sell him cocaine in the men's restroom, and he ordered the subject to flush the substance down the toilet. P667-668. She believes an investigation could have been conducted by local authorities. P667-668.

Count IV alleges a violation of Rule A.35, which states officers will not convert to their own use, manufacture, conceal, falsify, destroy, remove, disguise or alter any property or evidence in connection with an investigation or other police action. Johnson testified that by destroying the evidence, purported to be cocaine, it was a violation of the rule as how evidence should be handled based upon Department procedures. P668-669. According to Johnson, Garza could have contacted local authorities and provided the information to uniformed on-duty officers as to what had occurred. P669-670.

In Count V, Johnson believes Garza violated Rule A.47.c because his level of intoxication that night led to poor decisions and discredited the Department. Specifically, she stated he spoke with local officers and identified himself as an ISP officer, refused to leave Sportsman's and its nearby parking lot, used profanity when speaking to the officers and searched the contents of Stanford's pockets which she considered offensive and obnoxious. P672. Johnson said that Garza said to a bartender "what if I don't?" when asked to leave. P672.

Johnson testified that Garza violated Rule A.8 as alleged in Counts VI and VII by bringing the Department into disrepute because of his conduct at Sportsman's and Steak n Shake. P673-674. She said walking through the drive through line was not the smartest decision Garza

made that evening. P679. Finally, she testified that he violated Rule A.38 as alleged in Count VIII by using his Department issued PBT on a woman while at one of the bars. P675-676.

Johnson was shown the ISP Disciplinary Matrix, Petitioner's Exhibit 23, which she states puts officers on notice as to what could occur to them if they engage in certain behavior. P684-685. She said the Disciplinary Matrix is a guideline for the Merit Board to use in hearing cases. She said discipline can be up to termination for Level 7 offenses which include DUIs, being untruthful and sexual harassment. P685-686. She said on cross examination that the Merit Board is not bound to the Disciplinary Matrix. P704. She said that the Department had a history at the time it developed the Matrix of reviewing and applying precedent cases. P704.

On cross-examination Johnson was shown ISP Directive OPS-002, Weapons Discharge/Deadly Force Investigations (Respondent's Exhibit 3). She agreed the Directive mandates that the ISP must conduct an investigation when an employee is involved in a shooting. P688-689. She said DII handles the investigations. P686-687. DII never did a formal investigation of the shooting. P688-690. Johnson states that although there is an ISP policy which involves the use of force, Garza was not charged with a violation of that policy. P690. The Department is not alleging that Garza used excessive force on August 2, 2015, when he was involved in an altercation with Mason, because Mason had his hand on Garza's gun when it went off. P690-691, 693. Johnson testified the criminal charges against Garza were dismissed and his whole criminal case was expunged. P691-692. She indicated she knew Garza was injured during the Steak n Shake incident, later received medical treatment and was diagnosed with a concussion. P692-693.

Johnson agreed that Garza was never arrested for a DUI. P695, 704. A photograph taken from a cooler in his vehicle showed there were 10 bottles of beer in that cooler. P695. Only one

week before the hearing, Johnson became aware that Garza was issued two PBT devices. P696. She was aware that during Garza's administrative interview with case agent Tarod Deeder ("Deeder") that he had a PBT issued to him which had recorded the last 5 tests. P697. Garza was interviewed November 29, 2016, P698. Five separate tests were done on the PBT assigned to Garza in April 22, 2017 for purposes of training. P698. She agreed that if DII had followed up with Garza's request and obtained the PBT after Garza's November 29, 2016 interview, the history could have shown the last tests conducted actually pre-dated August 2, 2015. P700. She agreed Garza's 2016 request for a review of the PBT in his vehicle on August 2, 2015, was a logical one and she indicated she did not know why DII didn't do that. P700-701. She was aware that Garza requested her subordinate, Deeder, locate the PBT which recorded the last five tests, which he failed to do. P696-698. Johnson agreed that if DII had obtained that PBT the last five recalled tests may have pre-dated August 2, 2015. P700.

In Count I of the Complaint, Johnson stated Garza was never criminally arrested for DUI. P704. Johnson said prior to subjecting someone to a breathalyzer test, the subject must be directly and continuously observed for 20 minutes. P705. She stated Garza did not have a 20 minute observation period as the Danville Police Department never intended to arrest Garza for a DUI. P706. She said the 20 minute observation period applied to criminal and civil cases. P706. The Department never received a complaint about Garza's driving on August 1 or 2, 2015, P707-708, and there were not any ISPERN reports. P707-708. Johnson stated the Department was seeking a civil DUI. She testified that the 20 minute observation applies to civil cases. P709, 710. She said administrative hearings are civil proceedings. P710.

Johnson said Count II was a level 7 offense. P710-711. As to Count II, Johnson stated that she has a Giglio issue which occurred approximately 26 years ago when she was employed

with the ISP for approximately four or five years. She was charged with being untruthful in an official police report. P711. She did not recall the discipline she received. P712. She was not terminated. She agreed that there have been several ISP officers who have reached high ranks within the Department when they were found guilty of being untruthful. P713.

In Counts III and IV (Rules A.35 and A.55), Johnson does not believe they apply only to ongoing investigations. P714. Rule A.55 speaks of obstructing “an investigation”. P713. She stated in this matter there was no investigation. P714. She said if Garza did call the police, he did the right thing by calling the police to request assistance. P714. She said she does not agree with Garza telling Stanford to “get rid of” the drug. P714-715. She said she was aware of officers telling people to destroy cannabis. P715. She said Garza caused evidence to be destroyed by telling Stanford to flush evidence. P717. She said that she was aware Garza made a 9-1-1 call from the bar. P719. She said DII attempted to get the 9-1-1 call and no call was recorded. P719. She was unaware a call was found by a local dispatcher 6 months after it was made and was unaware records had been expunged. P720. She said a 9-1-1 call was appropriate. P720. Garza stated his case to the Board. P724. Darrell Bogard spoke to the Board for Garza. P725. The four colonels on the Board recommended Garza be terminated P727 based on the levels of charges contained in the Disciplinary Matrix. P727-728. She understood local officers did not search for drugs and did not conduct an interview of Stanford. P720-721. She said Deeder presented the DII investigation results to members of the Disciplinary Review Board. P721 (overview of the case).

Johnson testified the Disciplinary Review Board did not review precedent cases during Garza’s meeting. P728. She stated she did not review Garza’s precedent cases provided in discovery even though during all the other Merit Board cases in which she testified, Johnson was

aware that she would be questioned about the precedent cases, and those would be admitted into evidence. P728-729. Johnson testified that the Department's Disciplinary Matrix was created approximately seven to eight years ago by reviewing and applying precedent cases to try to determine the severity of the punishment. P704.

Johnson was questioned about Garza's precedent cases. P733 (Respondent's Exhibit 4). She agreed that several of the cases involve the same Rules of Conduct as alleged against Garza. P734. She was aware of the case involving Special Agent Lori Houston wherein she received a letter of reprimand for conduct on more than one occasion when she failed to take appropriate actions by instructing her son to flush his illegal drugs down the toilet. P734-736. Johnson did not know why Houston was not charged with violating Rules of Conduct A.35 or A.55 for destroying evidence involving an investigation. P737. She agreed that the charges in the Garza and Houston cases are inconsistent because Houston was only charged with bringing the Department into disrepute for disposing of narcotics. P737.

Johnson was familiar with the April 21, 2014 Merit Board Decision in the Matter of Master Sergeant Chadd Brody. P738 (Respondent's Exhibit 4). He received a 90 day suspension upon a Joint Motion for Decision of the Merit Board. P739. On two separate occasions in December 2012 and July 2013, while at a bar in Carlsbad, California, Brody consumed alcohol to the extent that it resulted in obnoxious behavior. P739,740. Brody had pled guilty to a misdemeanor offense of resisting an officer. P740. Garza had no criminal conviction. She said Brody had engaged in a physical and verbal altercation in the California bar. P740-741. Garza engaged in no physical altercation in a bar. Johnson agreed that there were similar charges involving Brady and Garza and Brady, unlike Garza, had prior discipline. P741.



Johnson testified about the October 21, 2011 Merit Board Decision in the Matter of Special Agent Timothy Brown. P742. The Department agreed to a 60 day suspension after Brown was at a strip club and became involved in a brawl. Brown pled guilty to a misdemeanor criminal charge of reckless conduct. P743. He was also charged with consuming alcohol while off duty to the extent that it resulted in obnoxious and offensive behavior. Again, Johnson agreed these were substantially similar to the current charges against Garza. P743. Johnson testified that the Department did not seek termination in Brody or Brown's case because they agreed that they should be less severely disciplined, i.e. a 60 and 90 day suspension. P744-745. Johnson acknowledged there were no weapons complaints against Garza P747-748, but she said a wrongful firearms discharge factored into the DUI charge because, but for Garza's intoxication, the Steak n Shake incident might not have occurred. P748

On redirect examination, Johnson testified about the Merit Board case involving Trooper Baker. The Department initially sought his termination but subsequently agreed to a 180 day suspension. Baker, while off duty, drank alcohol at a Buffalo Wild Wings restaurant in Southern Illinois, became intoxicated and then drove his vehicle on top of a fire hydrant. P751. Johnson also testified she was aware of the Merit Board case involving Trooper Woo. He received a 180 day suspension for conduct while at the Illinois State Fair when he became intoxicated, drove his squad car with an unauthorized female passenger and struck a telephone pole. P752. Johnson was aware that Mason "had been somewhat of a fighter before." P754.

## **B) RESPONDENT'S CASE IN CHIEF**

### **SERGEANT CHRISTOPHER WILKES**

Sergeant Christopher Wilkes (hereinafter "Wilkes") is a 13 year veteran of the Department. In 2014 he was a Sergeant and shift supervisor working the midnight shift in

District 5. P527-528. Wilkes supervised Garza and was aware he was very proactive and made quite a few DUI arrests. Garza led the District for DUI arrests for two years. P529. Wilkes never counseled or disciplined Garza when he was his supervisor. P530.

On cross-examination Wilkes stated he was somewhat aware of the charges in this case. He had not worked with Garza since 2014 and he never prepared a performance evaluation for him. P531-532.

#### MASTER SERGEANT MARTEZ MALONE

Master Sergeant Martez Malone (hereinafter "Malone") was called as a witness for Garza. P582. He had been employed with the ISP for 20 years. P583. He was promoted to Master Sergeant in 2009 and worked the day and midnight shift patrols in District 5. P582-583. Malone supervised Garza from January through June 2014 when he was assigned to the midnight shift. He described Garza as a very good Trooper who conducted several DUI arrests. P584. Garza led the midnight shift averaging at least four DUI arrests a month. P584-585. Malone never disciplined or counseled Garza and he stated Garza was not overly aggressive during his work. P585. Malone had no negative experiences with Garza during the time he supervised him. P586.

On cross-examination Malone stated he was unaware of the charges in this case and he never prepared a performance evaluation of Garza. P587. He had had no contact with Garza since June 2014. P586.

#### MASTER SERGEANT DAVID KELTNER

Master Sergeant David Keltner (hereinafter "Keltner") had worked for the Department for 17 years and had been assigned to District 5 for the last 18 months. P588-589. He testified that an Intoxilyzer 500 PBT was issued to Garza. P590. He received that information from

Trooper Mark Dorencz (hereinafter "Dorencz") who told Keltner that the PBT was not issued to anyone else after August 2, 2015. P590-591. The PBT was awarded to the District based upon some type of traffic safety challenge. P591. Garza was the only officer who ever possessed the device. P591. He did not know why tests were performed on the device in April 2017. P591.

Keltner supervised Garza when he was placed on disciplinary light duty status, P592, after felony charges against Garza were dismissed. Garza had no police powers on light duty. P593. Garza has assisted Keltner on multiple assignments including completing bond runs, preparing daily schedules and taking phone calls, sometimes emergency calls, P599, for the District. Garza also interacted with public citizens who went to the District for some type of service. P594. Garza has assisted with a range of assignments and gathered items for a fundraiser for troops overseas. P595. Keltner testified that Garza's work ethic had been very good and timely and that all of his interactions with the public have been positive. P595-597. On August 21, 2017, Keltner prepared a performance evaluation for Garza. (Respondent's Exhibit 2). Garza met expectations in all six dimensions and Keltner stated Garza never did anything which left a negative impression. P598.

On cross-examination Keltner testified he never saw Garza perform police powers/conduct an enforcement action. P599. He said the Intoxilyzer 500 does not appear to have an ISP tag number associated with it. P599-600.

#### SERGEANT BRAD SPRAGUE

Sergeant Brad Sprague (hereinafter "Sprague") had been employed with the Department since November 1995 and worked on patrol in District 15 until 1998 when he was transferred to District 5. P602-603. In April 2012 Sprague was promoted to Sergeant and worked the midnight shift. He supervised Garza from April 2012 through April 2013. P603.

Sprague described Garza as a very good worker who made a lot of arrests. P604. Garza was very eager to produce a good day's work and was one of the top writers on the midnight shift with a lot of DUI enforcement. Garza was always eager to take additional assignments and was a good aggressive young Trooper, P603-604, who put in an honest day's work. Garza never did anything which left a negative impression with Sprague and he never had to counsel or discipline him. P605-606.

On cross-examination Sprague stated he was not aware of the charges in this case and he never prepared a performance evaluation for Garza. P606-608.

#### TROOPER KENNETH GURNEY

Trooper Kenneth Gurney (hereinafter "Gurney") has been employed with the Department for 20 years and is currently the District 5 Court Officer. P609. Gurney had worked with Garza since he was placed on restricted disciplinary duty after the 2015 incident and dismissal of criminal charges. Garza has assisted him with his court duties which included taking tickets and bonds to court. The fact that the Department is seeking Garza's termination has not affected his work attitude. P610-611.

Gurney described Garza as a professional willing to do what was asked of him. P610. He was aware of Garza's prior work history which included some of Garza's DUI and criminal arrests while on patrol. During the time that Gurney worked with Garza as a court officer, Garza never did anything which left a negative opinion. P612.

#### MAJOR STEVE LOAN

Major Steve Loan (hereinafter "Loan") is a 23 year veteran of the Department and is currently the Region II Commander. Loan oversees the administrative and equipment functions at all the Districts and Zones within the Region which includes District 5. P613-614. After

Garza was placed on administrative duties, Loan would see him two or three times a week at his office in District 5. P615. He described Garza as a professional when answering questions and interacting with the public. P615-616. He noted no negative behavior from Garza stating he was willing to do whatever duties were asked of him. P616. Garza continues to do very productive work and he is a benefit to District 5. He stated Garza is very professional, courteous and knowledgeable with the public. P617.

On cross-examination, Loan stated he never prepared a performance evaluation for Garza. P618.

#### TROOPER MARK DORENCZ

Trooper Mark Dorencz (hereinafter "Dorencz") had been employed with the Department for 20 years and was currently the Fleet Officer in District 5. P767. He is responsible for monitoring Trooper's equipment and "making sure that everybody is equipped with what they need." P767. That includes Portable Breath Tests. P768. Dorencz attempted to determine what type of PBT was issued to Garza in August 2015. P768. He stated Garza had two PBT devices, one that was issued to all the Troopers in the District that did not have the capacity to store test results, P769, and another, an Intoxilyzer 500, which the District won as a result of a countrywide contest. P769. That PBT was issued to Garza because he had the most DUI arrests in the District. P770. It was not an ISP inventoried item. P769-770. Dorencz asked Garza to try out the PBT. P770. The Intoxilyzer 500 was not inventoried to Garza in August 2015. P770.

After Garza's DII interview on November 29, 2016, no one from DII or anyone else from the Department contacted him to determine what PBT devices were issued to Garza. P771. He said he had only recently been informed the Intoxilyzer 500 recorded the last 5 tests. P772. He indicated the Intoxilyzer 500 recorded the last five tests and those were all done on April 17,

2017. P772. The tests were done to certify three officers to become examiners. P772. That PBT Intoxilyzer 500 was not issued to any officer in District 5 between the time it was recovered from Garza on August 2, 2015, up until the time of the tests in April 2017. P773-774. Dorencz had no information that the Intoxilyzer 500 was used by anyone between August 2, 2015 and April 2017 when the tests were performed. P776, 777.

On cross-examination Dorencz testified that the Intoxilyzer 500 was not listed as part of Garza's inventory. He stated it was not an ISP item. P777, 780. It did not have an inventory number. P780.

On redirect examination Dorencz stated that once the District received the Intoxilyzer 500, it became Department controlled equipment. P781. He said he would not use the word "Department owned". P781. He said it would be fair to say that the Intoxilyzer 500 was District issued as opposed to Department issued. P782.

#### MASTER SERGEANT RONALD CAVES

Master Sergeant Ronald Caves (hereinafter "Caves") is a 21 year veteran of the Department and worked in District 5 from 2010 through March 2016. P784, 785. Caves supervised Garza for a short time and prepared an August 19, 2013, Part II Job Performance Evaluation. P785-786. (Respondent's Exhibit 2). Garza met or exceeded expectations in all categories, P787-788, He was one of the hardest working Troopers on the midnight shift and was the District leader in traffic and DUI enforcement. P788. In his evaluation, Caves noted that Garza consistently surpassed expectations in traffic inspection and enforcement and was among the District leaders in enforcement activity. P788. He was quick and effective in thinking through complex enforcement situations and continuously came to the proper enforcement decision. P789. Garza used good judgment during enforcement situations when determining the

proper action to take. P789. As to record and report management, Caves noted that Garza's reports were clear and concise and included all the necessary information to accurately reflect situations documented in his reports. P790. Those were always completed and submitted in a timely manner and rarely needed to be sent back for corrections. He testified Garza's reports served as an example to others on the shift and he was always consistent in his work ethic. P789, 790, 792. When he was his supervisor, Caves never recommended any discipline or counseling for Garza. P788.

On cross-examination Caves stated he was Garza's supervisor for approximately 6 to 18 months and he is not aware of the charges in this case. P792-793.

#### MASTER SERGEANT JEFFREY LISKH

Master Sergeant Jeffrey Liskh (hereinafter "Liskh") had been employed with the Department since March 2001 and in 2014 and 2015 was Garza's supervisor on the midnight shift in District 5. P795. Liskh prepared an August 19, 2014 Part II Job Performance Evaluation. P795 (Respondent's Exhibit 2). He indicated that Garza met expectations in 10 dimensions and exceeded expectations in traffic inspection and enforcement. P796. He said, with respect to the "special operations" category his evaluation should have said "N/A" because that category did not apply to Garza. P797. Garza was one of the activity leaders for the District during that evaluation. He was always one of the top performers for DUI arrests for the shift. P797. He made 666 traffic stops and issued 780 total citations, 367 speeding citations, 99 alcohol related citations and 51 DUI/zero-tolerance arrests with 18 criminal arrests. P798. His traffic stops were near the top of District records and his total citations were within the top 25 percent. P798. Liskh testified that his 99 alcohol-related citations and 51 DUI/zero tolerance arrests would have been the highest in the District. P798-799.

Garza also exceeded expectations in record and report management. Because he made so many arrests, he completed several reports each month which were always done in a timely manner and many times completed on his own time at home. P800. Garza exceeded expectations in professional development as he frequently sought training beyond Department requirements and was requested and selected to attend Field Officer Training School. P801.

On May 15, 2015, Liskh prepared a Party III Promotional Skills Evaluation and gave Garza skilled ratings in all 9 dimensions. P802. He noted that Garza was employed by the Department for three and a half years and was assigned to the midnight shift. He stated Garza's dedication to the Department and his focus on patrol priorities was obvious and greatly appreciated. P802-803. Based upon his number of traffic stops and DUI arrests, it was obvious that Garza was working towards their patrol priorities to keep the roadway safe. P803.

On cross-examination Liskh stated he was aware of some of the charges in this case. P803. While he was his supervisor, Garza was required to submit a couple of memos. One involved a uniform issue and another involved him doing some work in a squad car without prior approval. P804-805. He also had an issue involving social media when he posted some pictures of himself while in uniform. P805, 806.

On redirect examination Liskh stated that neither of the two incidents involving memos resulted in any formal counseling or discipline. P806.

#### TROOPER CODY GARZA

Garza was a graduate of Indiana State University with a degree in criminology. P810. Garza had been employed with the Department for six and a half years and is assigned to District 5. P808. He was assigned to District 5 midnight platoon. P808. From 2012 through 2014 he was the District 5 DUI Enforcement Officer of the Year. P809. He had always met or exceeded



expectations in his performance evaluations and has received numerous commendation letters for his DUI enforcement. P809. Garza had never received any prior discipline or negative counseling. P809.

On August 2, 2015, Garza attended his 10 year class reunion at Forest Glen County Preserve. P810. He had graduated from Georgetown Ridge Farm High School in Georgetown, Illinois, graduating in 2005. P810. He consumed no alcohol prior to the reunion. P811. He arrived at approximately 8:00 p.m. and brought 12 bottles of 12 ounce India Pale Ale P811-812 which he placed in a cooler with ice. P812. While at the reunion Garza was carrying his secondary weapon, a Glock 40 caliber pistol. P813. He testified Department policies encourage off duty officers to carry weapons. P813-815 and he was authorized to do so. P814. Garza drank two beers while at the reunion, P815, and he knew that amount because of memory and there later was a photograph of his cooler which contained 10 beers. P816 (Petitioner's Exhibit 24).

After the reunion, Garza and three of his classmates went to Josephine's Bar in Georgetown at about 10:30 or 10:45 p.m., P817, where he drank two Bud Light Margarita's P817 and was there about 2 ½ hours. Garza did not recall giving a female a PBT test at Josephine's Bar. P818. He never had the PBT device on his person that night and said the Intoxilyzer 500 was stored in the cargo area of his vehicle that night. P818. He described the Intoxilyzer 500 as being extremely big and bulky which would have been difficult to put in his pocket. P818.

After leaving Josephine's Bar at about 1:45 a.m. or 2:00 a.m. on August 2, 2015, Garza went to Sportsman's and other classmates went to Julie's Bar. P820. The two bars were in close proximity to each other. P819-820. Garza arrived at Sportsman's at approximately 2:20 a.m. P821. On his way to the bar, Garza made a 9-1-1 call after seeing some people walking out in the

country. P821-822. He believed Lynch ordered a beer for him. Garza took one drink and gave it back to him. He didn't like the taste of Bud Light. P822. He was socializing. P822. Respondent then went to the restroom. He said at the time he went to the bathroom he did not know the bar was going to be closing. P823. Stanford walked over to Garza, while Garza was urinating, with a white plastic bag and asked him if he wanted any. P823-824. Garza showed Stanford his badge and identified himself as a cop stating it probably would be a good idea if Stanford threw it in the toilet and Stanford did so. P824-825. Garza said he could not make an arrest because he did not have any type of restraints or a radio to call for any type of assistance if a struggle ensued. P825-826. He said if the substance (he believed it to be cocaine but did not know for sure) was in the toilet, it was not going to harm anybody. P825. Garza returned to his friends and told them what had occurred in the restroom. P826. A few minutes later, Garza was again approached by Stanford and began talking with him. Garza told Stanford to leave him and his friends alone. P826. Stanford left but continued his attempts to speak with Garza. Garza told him to go away or he would call the police. P827.

While at the Sportsman's Inn Bar, Garza called 9-1-1 reporting that he was an off-duty Trooper and a subject had attempted to sell him cocaine. He provided a description of Stanford. P827. While on his 9-1-1 call, Garza saw the Westville police pulling up and advised the 9-1-1 call taker that the police had arrived. P827-828. He said his criminal lawyer made attempts to secure the 9-1-1 recording. P828. He said after issuing an April 19, 2016, subpoena, his criminal lawyer reviewed the tape of the 9-1-1 call. P829-830. He said he hung up the phone and tried to greet the police at the door as they came in. P830. Respondent saw two uniformed officers but unsuccessfully attempted to greet them at the door. P830-831. Garza told the officers he called 9-1-1 P831 but he was told everyone needs to get out. P831. Brown told Garza he didn't care and

stated “everybody needed to get the fuck out”, a statement Garza said he made three or four times. P832-833. The other officer fist bumped Stanford and Garza then responded “this is bullshit”. Brown said it was closing time and everyone needed to get the fuck out. P832. Brown did not give Garza an opportunity to tell him what occurred in the restroom. P835.

Garza did not recall searching Stanford while in the bar or having any interaction with him in the parking lot. P833. He testified it was a drastic exaggeration that he was told by Brown to leave approximately 30 times. P836. He estimates Brown made that request three or four times inside the bar and another three or four times in the parking lot. P836.

While at Sportsman’s parking lot, Garza said Brown told he and his friends to “fuckin’ leave”. P834. Garza identified himself as a State Trooper, showed Brown his identification and said he had called 9-1-1. He said Brown indicated he did not get a call, it was closing time and Garza needed to leave. P834-835. He said he was never allowed to tell Brown what occurred in the bar. P835-836. He said he was interrupted by Brown saying he had to fucking leave. P836. He did not recall Brown telling him not to drive. P838. He said he didn’t hear anyone say they were not going to leave the Dollar General parking lot. P837. Garza initially left in Sapp’s truck and they went back because Garza did not feel comfortable leaving his vehicle thinking that it may be vandalized based upon his interactions with Stanford and the Westville police officers. P838-839. He said Brown was very unprofessional and seemed to have a general dislike for him. P839.

At approximately 3:45 a.m. on August 2, 2015, Garza and Sapp arrived at the Steak n Shake in Danville. Garza drove his own vehicle there. P840-841. They walked to the front door and it was locked. P841. A worker said the lobby was closed and they had to order at the drive thru. P841. Sapp walked back to his truck as Garza was going to place an order for both of

them. P842-843. Garza said it was convenient to walk up to the drive thru, there was only one other car in the drive thru, and he had done so previously. P843.

When Garza was standing at the drive thru for approximately 5 to 10 seconds, a vehicle with four occupants pulled up behind him. P843, 844. Mason approached Garza and asked him if the menu board was broken. P844. Mason, who Garza described as a black male, six feet tall and weighing 210 pounds, P845, then went back to his vehicle, but again approached Garza 10 to 15 seconds later. P846. Mason told Garza to "get the fuck out of the way", continued walking toward him and took a fighter's stance. P846, 847. Garza said he tried to diffuse the situation and said he was sure he would be waited on soon. P847. He then showed Mason his badge and identified himself as a police officer. He told Mason to calm down. P846-847. He thought showing the badge would calm things down. P847. Mason replied "I don't give a fuck about the badge" and told Garza not to reach for anything when Garza was attempting to put his wallet into his right back pocket. P847, 848. Garza said I'm not reaching for anything, I'm putting my wallet away. P848. Mason, at that point, pushed Garza in the upper chest with both hands causing Garza to lose his balance, go off his feet, then striking his right hip and head on the pavement. P848. Garza started to get up telling Mason to calm down. P848. Mason began to punch Garza in the face. P849. Garza said Mason hit him as he got to his feet, he put his hands up and Mason struck him with his right hand on the left side of Garza's face. P849. Mason then struck him a couple more times and pushed him. P849. Garza, who was dizzy, knew the only way to stop the attack was to display his firearm. P849. When he attempted to draw his weapon from his right waistband (he wanted to display the firearm to stop the attack), Mason continued to punch Garza and his left hand was on Garza's right hand which caused the gun to unintentionally discharge. P849-850. Garza said he is not sure whether the gun discharged while he and Mason were going

down or if it was when they hit the ground. P850. He remembers Mason being on top of him, punching him with one hand and grabbing the gun with the other hand. He said Mason eventually stopped punching him and grabbed his gun with both hands. He said his hand got wrenched back and he was kind of blacked out and his hand released. P850. He said he tried to retain his weapon and suffered ligament damage. P850. Garza said he never actually pointed his firearm at Mason. P851. He thought his hand was facing toward the ground. P852. He said he unintentionally discharged the weapon. P852. He said his firearm did not have an external safety. P853. He said he felt Mason take his gun and he remembered seeing Mason 25 to 35 feet away walking with his firearm. P853. Garza told Sapp to call the police and told Mason to drop the gun. P854. Mason continued walking. P854. Mason got in a vehicle and left. P854. Garza waited for the police. P854. Garza had a blood blister on his right finger which he testified was consistent with being caught in the slide of a gun. P851. Garza did not tell police officers he had driven to the Steak n Shake. P855.

After the Steak n Shake incident, Danville police arrived and took Garza to the Public Safety Building. P855. Before they left, Garza borrowed a flashlight from one of the officers to locate his keys and pocket knife which had dislodged from the inside of his pockets. P855-856. Garza said the force of hitting the ground caused his pocket knife to open. P856, Garza arrived at the Public Safety Building between 5:30 a.m. – 6:00 a.m. and was placed in an interview room. P856-857. He was never told he was being arrested for DUI and he remained in the interview room for 30-60 minutes without any interaction with the Danville police officers. P857. Campbell then asked Garza if he would be willing to take a breath test and was asked to follow him to another room. P858. Campbell did not tell Garza the reasons for the test. Garza saw ISP

Special Agent Kim Hart and assumed it was a State Police order to supply a breath test after an officer involved shooting. P859. Garza was not given a reason for the breath test. P868.

Prior to the breath test, Garza stated there was not a 20 minute observation period. P860. Ten to fifteen minutes before the test, while sitting alone in the interview room, Garza vomited into a trash can. P860, 861, 869. He did not remember what the vomit looked like. P870. He vomited two times after the test and regularly thereafter for the next three to four days. Garza went to Carle Clinic in Danville after being released from jail. P864. He was later examined by Doctor Jonathan Parker on August 6, 2015, at the Morris Hospital and was diagnosed with having a concussion. P866-867 (Respondent's Exhibit 5 are the medical records generated by Dr. Parker and the Morris Hospital). After the breath test, Garza gave a criminal interview. He was read his Miranda Rights. P870. He gave the criminal interview because he did not do anything wrong and was completely cooperative. He said he had nothing to hide. P871. He was arrested for reckless discharge of a firearm. P871.

Garza stated his vehicle was searched by Special Agent Hart who neither had a warrant or his consent. P873. Garza had no idea how his Intoxilyzer 500 PBT arrived in the custody of Officer Dorencz at District 5. P873-874. He said the Intoxilyzer 500 had been removed from his car when he got his car back. P874. He states the criminal charges against him were dismissed on October 7, 2016. P875. The records of his criminal case were expunged. P866-867 (Respondent's Exhibit 6). Records involving the criminal charges were destroyed. P878. Garza remained off work until that time because his FOID card had been revoked. P875. Garza is not making any claim for back wages from August 2, 2015, up until October 7, 2016, when his criminal case was dismissed. P875.

On November 6, 2017, Respondent returned to work as an administrative officer with no police powers. P876. On November 29, 2016, DII conducted its administrative interview of him. P878. During the interview, Garza asked the agents to obtain the 9-1-1 call he made, as Garza was unable to obtain a copy from his criminal attorney due to judicial discovery rules. P881. He was personally unable to remove the 9-1-1 recording from his attorney's office. P881. Garza believed that if DII had simply reviewed the court record and criminal docket sheet, they would have been able to discover that 9-1-1 call compact discs were produced. P882. He said a simple call to the Vermillion County State's Attorney would have allowed DII to secure the 9-1-1 recording. The expungement had not yet gone into effect. P882. Also, during the same interview, Garza became aware there was an allegation he had used a PBT. P879. He requested they look at the PBT. P879. He informed the DII agents (Tarod Deeder and Matthew Barber) that the PBT he had in his truck on August 2, 2015, recorded the past 5 tests. P879. Respondent assumed that DII would investigate the issue because Garza was not in possession of his equipment and could not have obtained the PBT to provide it to DII. P879. He said he believed DII made no attempt to locate the Intoxilyzer 500. Garza was stripped of all his equipment about August 5, 2015, including his weapons, PBTs and squad car. P880.

Garza then addressed the allegations of the Merit Board Complaint. In response to Count I, he denied he was driving under the influence of alcohol and drank 13 to 18 beers. P883. He testified he had never drank that much beer in one setting. P883. As to the blood alcohol level, he said he had no explanation as to the .153 test results. P884. He said he vomited 10 to 15 minutes prior to his breath test. P884. Garza cited Savage's testimony that he had seen a numerical value appear in a test when he had expected to see mouth alcohol flag the results. P885. He testified that none of the normal procedures for a DUI arrest were afforded to him. P886.

In response to Count II, which alleges he was untruthful during his administrative interview on six occasions, Garza testified that if DII had obtained his Intoxilyzer 500 PBT, it would have shown he did not issue any breath tests on a female subject on August 2, 2015. P887, 888. He said the Intoxilyzer 500 was not department issued. P887. He said his Department issued PBT had been in his squad car at home. P887. He had no recollection of administering a breath test on or about August 2, 2015. P888. He testified he had no reason to lie about not going to Julie's Bar in Westville. P889. He said he did not go in there. P889. He said had he remembered going in there, he would have said so. P890. He stated he did not recall searching Stanford at Sportsman's, P890, and could only remember drinking four beers that evening. P890. While at Sportsman's, he did not purchase any beer and he told DII that he took a drink out of a beer (a Bud Light) but gave it away because he didn't like it. P891.

On cross-examination Garza reiterated he had no recollection of going to Julie's Bar. He said he has relived the night a thousand times in his head and he "100 percent" does not remember going there. He said he would have said so. P900.

He said the 9-1-1 tape of his call from Sportsman's clearly showed him telling the dispatcher "Okay, they're here" and him hanging up. P900-901.

He acknowledged Officer Brown telling him a few times to leave Sportsman's. P901. He acknowledged it was important to follow instructions. P901.

Garza said he did try to aim his weapon at Mason but was not able to do so. P903. He said reaching for his firearm was an intentional motion. P904.

Garza said his attorney in these proceedings, Guy Studach, could not get the 9-1-1 tape from his criminal defense lawyer because his criminal defense lawyer was prohibited from



releasing the 9-1-1 tape due to Supreme Court Rules. P904-905. Garza said he assumed DII, a fact finder, would secure the 9-1-1 tape. P905.

The hearing officer then reviewed Petitioner's Exhibit 2, a recording of Garza's interview by Sergeant Campbell and Commander Jane McFadden (Petitioner's Exhibit 2) on August 2, 2015. The recording was admitted. The recording contained the following:

Garza does not believe he obstructed an investigation by destroying evidence as alleged in Count III. P892. He testified there was no investigation to impede, and he understands the Rule of Conduct to only apply when evidence is destroyed involving an open, ongoing investigation. P892-893. In response to Count IV, Garza testified he did not take any police action on August 2, 2015, as he did not have the proper equipment and was off duty. He called local law enforcement to inform them of what had occurred. P893.

Garza did not believe he violated the Rule of Conduct alleged in Count V because he did not recall calling one of the officers dirty but did remember stating "this is bullshit" when he saw one of the officers fist bump Stanford. P894-895.

Garza testified he did not bring the Department into disrepute as alleged in Counts VI and VII. He stated he was trying to be cooperative with the officers at the Sportsman's Inn Bar and properly followed the guidelines for the use of force in defending himself during the altercation with Mason. P895, 896. After the physical altercation began, he said he did not have time to just walk away from Mason. P896. He indicated he could not have turned his back on Mason as he would have risked his life. P896.

In response to the Department's request for the termination of his employment, Garza states he made mistakes but his supervisors testified he is a solid Trooper and works hard. P897. Based upon Johnson's testimony and precedent cases, Respondent does not believe he should

lose his job. P897. If given another chance, Garza states he will make the Department proud. P897-898.

### **C) PETITIONER'S REBUTTAL WITNESS**

#### **SPECIAL AGENT TAROD DEEDER**

Since June 2011, Deeder had worked as a Special Agent with DII. P927-928. He became involved in Garza's investigation in August 2015. P928. Deeder initially monitored the investigation. P929. He said the Danville Police Department was handling the criminal investigation. P929. He monitored court proceedings. P929. He said Special Agent Kim Hart was the case agent and Danville Police Department records were in her file. P930. She departed and he then took over the investigation. P930. The criminal reports from the Danville Police Department were already in the case file. P930. Deeder said that on August 2, 2015, Captain Darrell Bogard from District 5 went to Steak n Shake and removed State of Illinois issued equipment from Garza's vehicle. P932. He said it was normal practice to secure State of Illinois equipment when an individual is going to be placed off work. P932. He assumed Bogard transported the items back to the District. Deeder participated in Garza's administrative interview on November 26, 2016, after Garza's criminal case had been dismissed. P933. During that interview, Garza denied that he gave a PBT test to a civilian female outside of Josephine's Bar. P934. Garza indicated during the interview that the log for the PBT would show he did not use it. P934. At the conclusion of the interview, he contacted Captain Bogard and requested the inventory number, make and model of the PBT that was confiscated from Garza the day of his arrest. P934. In an e-mail, Bogard informed Deeder that it was an Intoxilyzer PBT. P934. He said the PBT did not have a recall function. P935. During the interview, Deeder testified that the second PBT was not listed in Garza's inventory. P937, 938. He said Garza did not advise him in

the interview that he had two PBTs. P936. He said he learned just a couple weeks prior to his November 28, 2017 testimony that Garza had two PBTs and that one of them had a recall function. P937.

Also, during his DII interview, Garza stated that he made a 9-1-1 call from Sportsman's to a local dispatcher. P938. Deeder obtained four 9-1-1 call recordings from the Danville Police Department's criminal investigative files. None of the calls were made by Garza from Sportsman's. P939. Garza never stated in the DII interview that his criminal defense attorney had a copy of the call P940 or that he had listened to the recording. Deeder said he learned there may have been a 9-1-1 call by Garza from Sportsman's on August 2, 2015, during the administrative interview of Garza. P939. Garza stated he had called 9-1-1 to report the attempted cocaine sale. P939.

On cross-examination Deeder was shown Respondent's Exhibit 7, a report which documented the receipt of the initial case materials from the Danville Police Department. P947. The 9-1-1 call recordings were received by Special Agent Hart on August 2, 2015. P947. Deeder continued to monitor the case by contacting the State's Attorney for updates. P949. He denies being informed that new 9-1-1 call recordings were produced in the case pursuant to subpoena. P949. He said he did not have a chance to review the criminal case docket sheet to determine if there was any new evidence. P949-950. He said he did not monitor the criminal case for new evidence. P950. Deeder never requested any further documentation between August 2, 2015, and November 29, 2016, the date of Garza's administrative interview. P951. He did not contact the State's Attorney to determine whether or not there were any additional documents or 9-1-1 calls as that would not have been part of a routine investigation. P951.

Deeder admitted that during Garza's administrative interview, he stated several times that he made a 9-1-1 call from Sportsman's to complain about Stanford. P952. Deeder was asked, to ensure a complete and fair investigation, to obtain a copy of the 9-1-1 call. P952. Deeder was advised of the 9-1-1 call from Sportsman's at the administrative interview. P954. He did not contact the Danville police after the administrative interview to determine whether there were any additional 9-1-1 calls. P953. He did not contact the custodian of the 9-1-1 calls to determine whether there were any additional calls made on August 2, 2015. P953-954.

Deeder testified that at the conclusion of the officer's administrative interview, the DII investigation is complete. P954. He states he never did any further investigation after a Trooper's administrative interview. P955. He then admitted he contacted Anderton after Garza's administrative interview concerning the issue of mouth alcohol. P955.

Deeder admitted that he thought it unusual when Garza informed him that he had a PBT which could recall the tests because the standard device issued to all officers did not have that feature. P955. Deeder was curious to determine what type of PBT Garza had. P955. Deeder did not contact the District 5 fleet or equipment officer to confirm whether such a PBT existed. P956. He said an equipment officer informed him that Garza had two PBTs. P956. He was informed one of the PBTs had recall function. P957. He did not obtain the second device. P957. He said he first learned that two PBT devices were issued to Garza approximately one week before this hearing from Attorney Hosteny. P965. He did not make any attempts to obtain those devices. P958. He agreed that the District equipment officer would possess more knowledge than Bogard as to what type of equipment was issued. He stated that the DII case is confidential and he did not "feel it was appropriate to reach out to the equipment officer" even though he admitted he typically interviews other officers involved in the case. P958-959. Deeder admitted

that it was not the responsibility of an officer to investigate himself during a DII investigation, as it is the DII agent's job to do a complete and thorough investigation. P970.

**DANVILLE POLICE DEPARTMENT  
INTERVIEW OF TROOPER CODY GARZA  
8/02/2015 9:30  
Pet. Ex. 2 (CD)**

Sergeant Josh Campbell  
Commander Jane McFadden

Trooper Cody Garza  
149 N Walker Street  
Braidwood, IL  
217-474-5510

Timeline of Video Recording:

4:00 – Miranda Rights  
5:42 – Interview starts  
28:00 – Interview ended  
47:30 – Sergeant Campbell came back in

Garza was interviewed by Campbell and Commander Jane McFadden (hereinafter “McFadden”) on August 2, 2015. The interview occurred on the same day and after the incident that occurred with Casey Mason at Steak n Shake in Danville, Illinois. The interview began with Campbell reading Garza his Miranda Rights. Campbell then asked Garza to identify his badge and firearm holster, which he had on his person at the time of the incident. They asked him to put on his holster to show how he was wearing it during the incident. McFadden asked him how he wore his shirt, he explained his shirt would have been over the top of his firearm. Next, Campbell asked Garza to explain the incident that occurred at Steak n Shake (Pet. Ex. 2, 5:42).

Summarizing Garza's recitation of the incident:

He and a friend went to Steak n Shake. The lobby was closed so they were instructed to go to the drive-up window. While at the drive-up window (on foot), a car pulled up and the front seat passenger got out (Mason) and asked him if it was broken. Garza responded that the lobby was closed and they'd have to order at the

window. Mason got back in the car. Ten seconds later, Mason got back out and told them to get out of the way so they could order. Garza refused. Mason began using profanity and told him to get out of the way. Garza told him to calm down. Garza got out his badge, showed it to Mason, and told him to calm down. Mason told Garza he did not care who he was or about his badge. Garza again tried to calm him down. There was some pushing back and forth. Mason was not backing down. Garza put his badge back in his pocket and attempted to reach for his firearm. Mason swung at him, hitting him in the left and right side of his head. Mason pushed him as he was reaching for his firearm. As Garza was falling backwards from being pushed, a shot from Garza's qualified secondary firearm was discharged. Garza blacked out. He did not remember struggling with the passenger and the firearm. Next thing he remembered, Mason was then walking northbound down the road with Garza's firearm. As soon as Garza got up from being pushed down, he told his friend to call 9-1-1 now. He yelled at Mason and instructed him to put down the gun. When Mason was about 75 feet down the road, the driver of the car Mason got out of picked him up on the side of the road and they took off northbound.

Campbell and McFadden asked several follow up questions. Garza was asked by both Campbell and McFadden at different times where he and his friend were prior to the incident. His immediate response was to question the relevance of the question. Through their questioning though, it was revealed that Garza and his friend were at their high school reunion on the day of the incident. He and his friend drove separately to Steak 'n Shake. When they learned the lobby of Steak 'n Shake was closed, Garza (alone) proceeded to go through the drive-through on foot. When asked why he didn't get in his car and drive through the drive-through, he responded it was because they were going to eat in the parking lot.

The details of how Garza went from showing his badge, putting it away, and discharging his firearm were then parsed out through further questioning by Campbell and McFadden. When asked why he pulled out his badge during the verbal altercation, Garza explained his intention

was to identify himself as a police officer and as a means to mitigate the situation, though he did not identify himself as an ISP Trooper.

Garza explained he was attempting to put his badge away as Mason was coming at him. The situation escalated to being physical very shortly after words were exchanged. Mason pushed him and told him to get the fuck out of the way. Garza put one hand up indicating for Mason to stop, with the other hand near his holstered firearm, and told Mason to back away. Mason told him not to reach for anything. Garza yelled for Mason to back away. Around that time is when Mason swung at Garza and pushed him to the ground.

When asked whether he already had his gun out as he was falling backwards from being pushed by Mason, he answered that he attempted to pull it out before he began falling backwards, but it came out of his pocket as he was falling. He remembered falling down and he remembered Mason swinging at him. He did not remember being hit in the head by Mason, but knew he had because his head was sore. He did not remember struggling with Mason to get his firearm. He did not recall how the gun came to be in Mason's possession. He remembered getting up and that Mason had his firearm. He remembered telling Mason to put the gun down. He did not remember exactly who called 9-1-1, but knew they were called as they were on the scene quickly.

When asked where the shot went, he guessed it went somewhere near the Stadium. He did not recall whether more shots were fired after he was pushed to the ground (his friend told him another round went off). When asked if the firearm was his duty weapon, he answered it was his qualified secondary firearm. Garza did not recall if any other cars pulled up to the drive-through during or after the altercation.

Campbell asked what was going through Garza's head when he showed Mason his badge and as Mason started coming at him. He responded that it was the worst possible scenario because Mason basically told him he did not care he was an officer. Garza thought that showing Mason his badge, Mason would get back in the car and that would be the end of it. But Mason did not care. He thought showing his badge would have diffused the situation. When asked what he thought was going to happen by pulling out his badge, Garza explained that Mason didn't care he was a police officer and had no regards for the law. He thought to himself, this is not going to end well. He explained Mason was the aggressor and was coming at him. Garza felt endangered at that point. He did not have an intermediate weapon, so he felt he had to revert to his firearm. He felt that was reasonable at the time.

Campbell came back into the interview room alone, to ask Garza a few more questions. It was revealed that Garza was in the process of putting his badge away to pull out his firearm when he was pushed to the ground and hit by Mason. When asked about whether the shot was fired intentionally rather than accidentally, he said Mason was the target and Garza was scared. Campbell asked what he was trying to do. Garza explained he was trying to pull out his firearm. Campbell asked if he was pointing the gun at Mason. He explained his gun was out of its holster, but he hadn't had a chance to point it yet. He hadn't raised it or aimed it yet. He was scared at that point, because Mason disregarded that he was a police officer. When asked how close he thought the shot was to hitting Mason, Garza responded that he thought it hit him.

#### **D. SUMMARY OF DII INTERVIEW**

##### **P's 3**

On November 29, 2016, DII conducted an administrative interview with Garza pursuant to a Complaint Against Department Member Form (CADMF) filed against Garza. P933; P's



Exhibit 3. A transcript of the interview is included with Petitioner's Exhibit 3. Special Agents Barber and Deeder interviewed Garza. He was questioned regarding the events of August 1 and 2, 2015. Answers provided by Garza in the interview form the basis of the following in Count II of the Complaint against Garza:

- That Garza lied about using a Department issued PBT on an unidentified female in Josephine's Bar
- That Garza lied about going into Julie's Bar
- That Garza lied about conducting a search of Stanford's person in Sportsman's
- That Garza lied when he said he only consumed four drinks
- That Garza lied when he said he did not consume nor purchase beers at Sportsman's
- That Garza lied in answering a question about his impairment related to his altercation with Casey Mason

#### **IV. GENERAL FINDINGS OF FACT**

##### **GARZA BACKGROUND**

Garza has been a Trooper since August 2011. He worked as a Trooper in District 5 from 2011 until August 2015. Garza had been a Trooper with the midnight platoon. He was assigned to administrative platoon after criminal charges against him were dismissed in Fall 2016.

There are no issues with reference to the jurisdiction of the Illinois State Police Merit Board with reference to this case.

The performance evaluations of Garza in 2013, 2014, 2015 and 2017 were introduced into evidence as Respondent's Exhibits 2. His evaluations were excellent. A 2014 evaluation stated Garza was consistently among District leaders in enforcement activity. He was commended for his reports, it was noted he seeks additional training and was selected for Field Officer Training. In addition, the testimony of the Sergeants, Master Sergeants and Major who

supervised Garza during his ISP employment were excellent. Garza was described as very proactive, a leader in DUI arrests, a very good Trooper and positive. The impressions he left with supervisors and co-workers were positive.

In 2013 his evaluation indicates he surpassed expectations, was a district enforcement leader, was quick and used good judgment.

Garza was never disciplined or counseled.

### **HIGH SCHOOL REUNION**

In the evening hours of August 1, 2015, Garza attended his class reunion at Forest Glen Park in Georgetown. Garza brought a twelve pack of beer – India Ale – with him. He testified he had not consumed alcohol before the reunion and drank two beers at the reunion. Arrasmith did not know how many beers Garza drank. He said maybe a couple. Arrasmith recalled there being 4-7 beers in the cooler when he left the reunion and after he put ice in the cooler. Photos of Garza's cooler taken on August 2, 2015, show 10 beers in the cooler (Petitioner's Exhibit 24 – admitted). Garza left the reunion in his own vehicle.

The Hearing Officer finds evidence elicited at hearing demonstrates Garza drank two beers at his reunion and was not intoxicated when he left the reunion.

### **MISCONDUCT AT JOSEPHINE'S BAR**

After the reunion, Garza went to Josephine's Bar in Georgetown with his friends at about 10:15 p.m. on August 1, 2015. Arrasmith said that at Josephine's he saw Garza give a breath alcohol test to an unidentified woman, tell her she was under .08 and OK to drive. Arrasmith saw Garza drink a beer. Garza said he drank a couple of margaritas in a can type drinks and that he had no beers.

Garza testified repeatedly to having no memory of giving a woman a PBT test at Josephine's.

In August 2015 Garza had two portable breath test devices (PBTs). One was of the type issued to all Troopers in the District. Another, an Intoxilyzer 500, was won by the District. It was not an ISP inventoried item. The Hearing Officer does not find the PBT's lack of inventory status to be a fault of Garza. Trooper Dorencz, a Fleet Officer in District 5, asked Garza to try out the device. The Intoxilyzer 500 was given to Garza because of his high DUI arrest rate. It was not a device inventoried to Garza in August 2015 and was not an ISP item. The Intoxilyzer 500 stored the last 5 test results. The Intoxilyzer 500 had been stored by the Department after the August 2015 incident. In April 2017 the Intoxilyzer 500 was used for testing purposes which caused August 2015 test results to be erased. There was no ISP record of the device having been used from August 2015, when it was recovered from Garza, until April 2017. Trooper Dorencz said the Intoxilyzer 500 was District issued, not Department issued.

Garza had the Intoxilyzer 500 in the cargo area of his vehicle on August 1 and 2, 2015. It was removed from his vehicle by ISP personnel (Kim Hart) and placed with Officer Dorencz in District 5 on or about August 2, 2015.

On November 29, 2016, the ISP division of Internal Investigations (DII) conducted an interview of Garza at which time Garza became aware of an allegation he had misused a PBT. He informed the DII agents (Tarod Deeder and Matthew Barber) that the PBT in his truck on August 2, 2015, had recorded the previous 5 tests. He assumed that DII would locate and examine the device.

An examination of the Intoxilyzer 500 by ISP prior to April 2017, when it was used for testing, would have provided definitive proof of its use on August 2, 2015.

Deeder confirmed the PBT confiscated from Garza, on August 2, 2015, was the Intoxilyzer 500 which had a recall function.

The Department based its complaint against Garza regarding the misuse of a PBT on Arrasmith's testimony regarding Garza having given an unidentified woman a breath test. (Deeder stated in the administrative interview in November 2016, the Department had two witnesses saying Garza used a PBT on a woman, but the only witness who testified about a PBT being used on a woman was Arrasmith). The Hearing Officer does not find Arrasmith to have been a consistently credible witness. Garza said he had not given a breath test to anyone that night. The woman who allegedly was administered the test was never identified. She never testified. The recall function in the Intoxilyzer 500 recovered from Garza's vehicle on August 2, 2015, was never examined, even after Garza informed DII the device had a recall function. Had the device been tested after Garza's administrative interview in November 2016, the test results would likely have been discovered. Instead, they were erased in April 2017 with use of the device for testing purposes for other Troopers.

The Hearing Officer does not find, by a preponderance of the evidence, that Garza used a PBT on August 1 or 2, 2015, on an unidentified female subject or that he lied about the use of a PBT during his administrative review.

### **JULIE'S BAR**

Garza and his friends left Josephine's after about an hour or two and drove to Westville. Part of the group went into Julie's Bar. Part of the group went into Sportsman's. The bars are in very close proximity to each other. Garza did not recall going into Julie's Bar after leaving Josephine's Bar. Garza said he went to Sportsman's at about 1:45 a.m. or 2:00 a.m. Arrasmith said Garza went to Julie's for a time and he believed Garza drank a beer.

There was no reason or advantage to Garza for lying about being at one bar (Julie's) rather than another (Sportsman's). Parts of Garza's group were in and out of both bars which were in very close proximity. There was no testimony or evidence from any other source regarding whether Garza went to Julie's Bar in addition to Sportsman's. The Hearing Officer believes it quite possible that Arrasmith and/or Garza lost track of who was in what bar and that it is not uncommon for individuals going to more than one bar in an evening not to have solid recollection of the bars visited.

The Hearing Officer cannot conclude, by a preponderance of the evidence, that Garza went to Julie's and lied about it.

#### **SPORTSMAN'S INN BAR**

Garza was at Sportsman's in the early morning hours of August 2, 2015 (about 2:20 a.m.). Arrasmith was also there along with others from the reunion. Garza said he did not order a drink there, that someone else had ordered him a drink, a Bud Light, but he didn't drink it because he doesn't like Bud Light. He said he gave the drink away.

Garza testified Stanford attempted to sell him a substance he believed was cocaine in the men's bathroom. Garza told Stanford to flush the substance down the toilet and Stanford did so. He identified himself as a police officer. Stanford said he never had drugs and never flushed drugs down the toilet. Arrasmith said drugs dropped from Stanford's person during a search by Garza and Stanford ran into the men's room and flushed the substance (there was no other support for Arrasmith's account).

Garza testified he called 9-1-1 and hung up with the operator as local police were entering the bar. Garza's criminal lawyer secured the 9-1-1 call. Garza testified that the local officers were unwilling to communicate with him and were focused, using crude language ("get

the fuck out”), on clearing Garza out of the bar. He said he was told to leave the bar three or four times while he was attempting to communicate what occurred with Stanford. Garza was very unhappy with the behavior of the local officers and made disrespectful comments to the local police officers including “this is bullshit”.

Garza denied using profanity other than “this is bullshit” and denied searching Stanford. Garza denied approaching Stanford in the parking lot outside Sportsman’s and said he was not in a position to arrest Stanford.

Garza left in his friend Sapp’s vehicle after a local police officer warned him not to drive but went back to Sportsman’s later and retrieved his own vehicle and left for Steak n Shake.

Arrasmith said Stanford agreed to be searched and Garza searched him. Arrasmith said police arrived and demanded multiple times that they leave. In the parking lot outside Sportsman’s Arrasmith said Garza exchanged words with Stanford and police told them to leave. Arrasmith said Garza left with Sapp. Arrasmith encouraged him to leave with Sapp because he didn’t want trouble from the local police.

Arrasmith said Garza was not on the phone when the local police arrived at Sportsman’s. Arrasmith described Garza attempting to tell the officers what occurred and being disregarded. Arrasmith saw an officer fist bump Stanford.

The bartender, Miller, said Garza arrived at Sportsman’s around 2:00 a.m. and ordered a beer. She said he went to the bathroom about 2:45 a.m. and left a beer that was not empty on the bar. She observed Stanford telling Garza to pat him down and telling him to look. She said Stanford emptied his own pockets. She said Officer Brown indicated he didn’t care if Garza was a police officer or there was a drug deal and told him to get out of the bar. She said Garza was,

perhaps, rightfully upset about the Stanford situation and being disregarded by the local officers. She did not believe Garza was intoxicated.

Officer Josh Brown said he and Officer Nickle arrived at Sportsman's about closing time. He said when he entered he watched Garza on the phone for about 30 seconds to 2 minutes. He told Garza to leave. Garza told him Stanford attempted to sell him drugs. He patted Stanford down and asked him if he wanted to pursue anything against Garza for searching him. Stanford declined and said he was OK. Brown said Garza appeared intoxicated. He denied using profanity. Brown said words were exchanged between Brown and Stanford in the parking lot.

Nickle testified Brown asked Garza for his credentials and was provided a driver's license. Nickle said Garza was irate and irrational.

Stanford said that Garza was attempting to enter the bathroom at Sportsman's and Stanford said he was doing drugs. He said in reality he never had drugs and flushed nothing. He said Garza searched him which he had no problem with. He said he tried to leave but Garza told him to stay because he was calling superiors. Garza didn't touch him. The local officers searched him and let him leave. Stanford said he did fist bump the officer. He said words were exchanged in the parking lot.

The Hearing Officer finds that Stanford indicated he was selling drugs and then said he had no drugs. The Hearing Officer finds Garza did see a substance which he told Stanford to flush. The Hearing Officer finds Stanford invited searches, pulled on the waist band of his shorts and emptied his own pockets, but that Garza did not search Stanford. The Hearing Officer does not believe there was an investigation Garza thwarted. The Hearing Officer finds Garza called 9-1-1 regarding the Stanford situation. The Hearing Officer finds that Garza was very frustrated at being disregarded by local police officers and failed to use appropriate personal restraint. The

Hearing Officer finds the local police officers entered the bar lacking patience or willingness to communicate calmly with Garza. Garza, a Trooper, did not use good judgment in the manner in which he dealt with clearly irritated local police officers. The Hearing Officer finds that both Garza and Officer Brown used language and made comments that were not professional.

A veteran bartender did not believe Garza was intoxicated. The local officers believed Garza was intoxicated. Witness testimony regarding Garza having consumed alcohol at Sportsman's was not compelling or extensive.

### **STEAK N SHAKE INCIDENT**

Garza drove his own vehicle from the parking lot outside Sportsman's to the Steak n Shake in Danville. Being unable to enter into the restaurant, Garza walked to the drive thru in an unsuccessful attempt to make an order. Mason approached Garza first in a civil manner and Garza indicated he was trying to order food. Mason approached a second time, angry and demanding Garza move from the drive thru. Garza showed his badge in what he described as an attempt to diffuse the situation. Mason physically pushed Garza causing Garza to fall and strike his head. Garza was struck again when reaching for his firearm hoping to end the attack. He was dizzy. During the altercation, Garza's firearm was discharged twice without hitting Mason. Garza said the discharge was unintentional. Mason continued to strike Garza, took possession of Garza's firearm and later turned it into the Danville police. Garza asked his friend and others to call the police. He didn't report the gunshots and said he assumed others had.

The Hearing Officer finds that Garza's judgment in walking to a drive thru window to order food in the middle of the night was poor, his decision not to immediately return to his car the first time Mason approached him was poor as Mason was using the drive thru lane for its intended purpose and Garza was not. The Hearing Officer finds Garza could have walked away



from Mason the second time he had approached had he done so quickly and with good judgment. Thereafter, Garza found himself the victim of Mason who was the aggressor. Though faulting Garza for shoddy decision making that placed Garza and others in peril in the middle of the night, the Hearing Officer does not find Garza at fault for Mason initiating a physical altercation or a weapon being drawn in self-defense and unintentionally being fired.

The issue of intoxication is addressed below.

### **INTOXICATION**

The Department alleges Garza was highly intoxicated on August 2, 2015, when the incidents at Sportsman's and Steak n Shake occurred and while driving his vehicle.

The very important facts and issues relating to Garza's breath test are addressed later in this section.

The following was adduced by witness testimony:

- Garza said he consumed 2 bottles of beer at the reunion on August 1, 2015. Petitioner's Exhibit 24 supports that testimony (10 bottles from a 12-pack remained).
- Arrasmith couldn't say how much beer Garza drank at the reunion.
- Garza said he drank 2 margarita in a can type drinks at Josephine's.
- Arrasmith said he thought Garza drank one can of beer at Julie's Bar.
- Garza said he was never at Julie's Bar.
- Garza said he did not order a beer at Sportsman's, that someone ordered a beer for him and that he did not drink it.
- Arrasmith said he thought he saw Garza drinking a beer at Sportsman's which could have been the same beer from Julie's. He thought Garza may have given one of his beers to Cory Lynch.
- Arrasmith said he saw Garza drinking beer from a bottle and he may have had a couple of beers from glasses, he did not recall seeing an aluminum can and said he doesn't really pay attention to what other people are drinking.

- Stanford said Garza appeared intoxicated at Sportsman's (drunk knows drunk). There was no testimony Stanford observed Garza drinking.
- Officer Joshua Brown testified Garza appeared drunk at Sportsman's. There was no testimony he saw Garza drinking. He would have arrested Garza for DUI had he seen him drive.
- Officer Andrew Nickle testified Garza appeared intoxicated at Sportsman's.
- Carissa Miller, a weekend bartender for seven years said Garza ordered a Bud Light but did not consume it all. Arrasmith said Garza may have bought Cory Lynch a drink. She had taken online classes regarding identifying intoxicated individuals. She did not believe Garza was intoxicated.
- Officer John McFarland, a Danville Patrol Officer who responded to the Steak n Shake incident testified he believed Garza was intoxicated but admitted some of Garza's symptoms could have been consistent with fatigue and a concussion.

Based on Garza's testimony and the testimony of the witnesses who had observed Garza (set forth above), the Hearing Officer cannot conclude, by a preponderance of the evidence, that Garza was intoxicated on August 2, 2015.

### **ALCOHOL BREATH TEST**

After the Steak n Shake incident Garza was brought to the Danville Police Department by Danville Police Officer John McFarland and placed in an interview room. Garza was not being recorded though the capability to record him existed. Danville Sergeant Josh Campbell arrived around 6:00 a.m. and took photographs of Garza and his possessions (Petitioner's Exhibits 7 and 8). He said Garza was not brought in for DUI charges.

A breath test was administered around 7:00 a.m. on September 2, 2015, by Vermillion County Sheriff Kevin Maskell. It was uncontroverted there had been no 20 minute observation of Garza by Campbell or anyone else prior to the test.

Garza said he vomited prior to the test and while in the interview room. Campbell did not inquire about vomit and Garza did not inform Campbell about the vomiting. Campbell made no inquiry regarding consumption of food, drink or water before the test.

The test results were .153 which was indicative of intoxications.

Campbell saw scrapes on Garza's hand, a blood blister and a visible bump near his right temple.

The breath test given by Campbell was a "quick test" which are not used in DUI situations.

Campbell saw, but did not record, Garza vomiting after his breath test. No one inspected the garbage cans.

Campbell acknowledged the Illinois Administrative Code (R's Exhibit 1) requires that a subject be observed continuously for 20 minutes prior to obtaining a breath analysis reading. 20 IL ADC 1286.310 states:

"During the 20 minute observation period the subject shall be deprived of alcohol and foreign substances and shall not have vomited."

Maskell said a 20 minute observation was not necessary because Garza was not being arrested for DUI. He said the fact Garza was administered a "quick test" versus a normal DUI test did not affect the function of the machine. It simply meant less personal data was input in to the machine. If Maskell had known Garza had vomited before the test, he would have asked for an observation period.

Trooper Gary Anderton, a Breath Analysis Operator, Technician and Instructor, said if mouth alcohol from vomit had been present, the machine would have shut down and the test cancelled. He agreed with Maskell that a "quick test" does not affect the actual result. He

opined the .153 result was accurate. He said the device had been tested and was functioning properly.

Anderton said 20 minute observation period requirements apply to civil cases. He said vomiting requires the 20 minute observation period to start over. All Troopers are taught that.

John Wetstein, certified by ISP to conduct tests for alcohol and drugs in biological fluids, opined Garza consumed 13-18 beers the night/early morning of August 1 and 2, 2015 (8:00 p.m. to 3:15 a.m.). He opined that between 3:30 a.m. and 3:45 a.m. Garza's blood alcohol concentration would have been .185 to .218 and .185 to .215 at 3:52 a.m.

Todd Savage, an ISP Breath Alcohol Technician, trains officers and travels to police agencies to ensure breathalyzer instruments are accurate. He opined the machine used on Garza would have been working properly on August 2, 2015. He agreed the 20 minute observation period applies to both civil and criminal cases. He said if Garza's vomit had resulted in the presence of mouth alcohol, it would have been flagged and the test canceled.

The Hearing Officer has significant concerns regarding the failure of law enforcement personnel not to follow very well-known and basic IAC requirement that all breath alcohol tests be preceded by a 20 minute observation period to ensure, among other things, Garza had not vomited.

The Hearing Officer believes Garza had vomited in the 20 minute period of time before his test. She believes it the responsibility of the test administrator, not the subject, to definitively ascertain that which transpires the 20 minutes before a breath test.

Garza's counsel objected to the entry into evidence of Garza's breath test results. To ensure a complete record in this case for the Board and for other reasons, the Hearing Officer overruled the objection and admitted the evidence. Garza's objections were preserved.

A very significant issue in this case is whether 20 IL AOC 1286.310 of the Illinois Administrative Code applies to this proceeding. Count I of the Complaint charges Trooper Garza with driving under the influence of alcohol. Counsel for Garza argues that Count I charges Garza with a DUI in a civil forum and thus the Code applies. Petitioner argues the Code does not apply because Garza was not arrested for a DUI. Neither party provided specific authority stating the Code applied or did not apply to this disciplinary case. The Hearing Officer's independent research did not result in clear authority.

Though Garza was criminally charged relating to the Steak n Shake incident (charges later dropped by the Vermillion County State's Attorney and expunged), there was no criminal charge brought for driving under the influence though Vermillion County was aware of the .153 BAC (R's 7).

The Illinois Administrative Code requires an agency employee to continuously observe the subject for at least 20 minutes before a breath test. The Rule clearly states that if a subject vomits, the process starts over. 20 IL ADC 1286.310.

The Illinois Supreme Court in People v. Bonutti, 212 Ill. 2d 182, 817 NE 2d 489, 288 Ill. Dec. 131 (2004) took the code very seriously in stating:

Administrative regulations have the force and effect of law and are construed according to the same standard that govern the construction of statutes.

The purpose of Section 1286.310(a) is to ensure that only accurate breath-alcohol tests are admitted into evidence against a criminal defendant.

Section 1286.310(a) exists because regurgitation within 20 minutes of a breath alcohol test can render a false positive. In other words, a lack of compliance with Section 1286.310(a) has the potential to create criminals out of people who are not.

The burden of proof in this case rests upon the Illinois State Police. The ISP is required to prove that the matters asserted are more probably true than not true.

The Hearing Officer believes that Garza was in all likelihood intoxicated and that the test results were, in all likelihood, accurate. However, BAC test results being used to support a case for terminating Garza were secured in a manner that violated the Illinois Administrative Code.

The Hearing Officer agrees with Colonel Joann Johnson that Troopers are held to the law as the general motoring public. A member of the general motoring public would receive a 20 minute observation period for there to be a binding BAC. Garza, not facing criminal charges but facing the loss of his job for cause, was not afforded a 20 minute observation period which failure would be fatal to a criminal driving under the influence charge.

### **BRINGING THE DEPARTMENT INTO DISREPUTE**

Troopers like Garza are called on to maintain a level of conduct in their personal affairs that are in keeping with the highest standards of the law enforcement profession and are charged with avoiding any conduct that causes the Department to be brought into disrepute.

Despite Officer Brown's lack of late night reserve and composure, Garza did not conduct himself with the highest of standards and may have caused the Department to be brought into disrepute in the eyes of some by not immediately following police direction, even if he believed those directions prevented him from reporting a matter involving drugs, making "bullshit" comments, making comments about the officer's behavior or giving police a bad name, exchanging words in the parking lot with Stanford, not immediately producing a police ID when requested and regardless of his thoughts regarding the direction, and driving his vehicle after Officer Brown told him not to.

The local officers were individuals with whom the Illinois State Police must interact. The local officers were dismayed by Garza's behavior.

Walking through a Steak n Shake drive thru lane on foot in the early morning hours and then not immediately getting out of the lane for a vehicle was foolish. Not then immediately clearing out when he became aware Mason was irritated lacked basic intellectual acuity and good instincts and was not consistent with high Department standards and served to create a situation that brought the Department into disrepute. There were newspaper articles regarding the incident.

The Hearing Officer finds the above stated behavior of Garza was not in keeping with the highest standards of law enforcement behavior and did cause the Department to fall into disrepute.

#### **IV. SPECIFIC FINDINGS OF FACT**

##### **COUNT I**

Count I of the Complaint alleged Garza violated Department Directive ROC-002, Paragraph III.A 47.b which states: "An officer will not, while on or off duty, drive or be in physical control of a vehicle while under the influence of alcohol..."

Count I of the Complaint alleges that on August 2, 2015, Garza, while off duty, drove his personal vehicle under the influence of alcohol in Vermillion County, Illinois

##### **FINDING**

The Hearing Officer finds that Garza consumed alcohol on August 2, 2015, and that he was in control of a vehicle. The testimony of Garza and the combined testimony of witnesses who observed him on August 2, 2015, does not support a finding of Garza driving his personal vehicle under the influence of alcohol in Vermillion County that date.

The Hearing Officer finds that BAC test results and expert analysis of those results demonstrate that Garza was intoxicated when he drove to Steak n Shake on August 2, 2015.

The Hearing Officer further finds that Illinois Administrative Code rules were not followed in the administration of the breath test to Garza on August 2, 2015. The 20 minute observation period is a basic tenant of the administration of breath tests and a requirement of the Illinois Administrative Code. The requirement would not be present in the Code for so many years and be so well known and well respected by the law enforcement witnesses in this case without the observation period being a necessity to protect the subjects of testing.

For the above stated reasons, the Hearing Officer specifically finds that Trooper Garza was not under the influence of alcohol while driving his personal vehicle on August 2, 2015.

## COUNT II

Count II of the Complaint alleged Garza violated Department Directive ROC-002, Paragraph III.A.1.41.c (Rule 41.c) which requires that officers truthfully answer questions by, or render material and relevant statements to, competent authority in a Department personnel investigation when said officer is the subject of the investigation. The Complaint alleges that Garza violated this rule on November 29, 2016, when administratively interviewed by Department personnel, when he denied:

- (1) That he used a Department issued PBT on a female subject while inside Josephine's Bar;
- (2) That he did not go inside Julie's Bar in Westville;
- (3) That he did not conduct a search of Frederick Stanford's person while in the Sportsman's Inn Bar;
- (4) That he only consumed four beers that evening, two at his class reunion and two at Josephine's Bar;
- (5) That he did not consume, nor purchase, any beers while at the Sportsman's Inn Bar;
- (6) That his level of impairment at the time of the altercation with Casey Mason was not beyond what it normally is, meaning that he was not intoxicated during the altercation.



## FINDING

(1) PBT Use. The only evidence supportive of Garza having used a PBT on a female subject on or about August 1 or 2, 2015, was the testimony of Arrasmith, not a consistently credible witness, which was contradicted by Garza and supported by no other witness. Proof was available to ISP that would have definitively shown whether the PBT was used on or about August 2, 2015, and ISP did not access that proof.

For these reasons, the Hearing Officer specifically finds Garza did not lie about using a Department Issued PBT on a subject in Josephine's Bar.

(2) Presence in Julie's Bar. The only evidence supportive of Garza being in Julie's Bar was the testimony of Arrasmith which was contradicted by Garza. The Hearing Officer notes individuals from the class reunion divided with some going to Julie's and some going to Sportsman's which were bars in very close proximity to each other. Arrasmith, not consistently reliable witness, could easily have been confused regarding who was where, including Garza. There was no reason or benefit to Garza to have lied about being in Julie's Bar in Westville as opposed to Sportsman's Bar in Westville.

For these reasons, the Hearing Officer specifically finds Garza did not lie about being in Julie's Bar in Westville.

(3) Searching Frederick Stanford. There are significant discrepancies in the testimony regarding Frederick Stanford being searched.

Garza testified he did not search Stanford. Stanford, not a credible witness, said Garza did search him but that he didn't care. Arrasmith said Garza searched Stanford after Stanford invited the search.

The Hearing Officer finds Arrasmith's accounts of what occurred August 1-2, 2015, were at times quite questionable. By way of example, he was the only person who said anything ever fell out of Stanford's waist band and the only witness who said Stanford ran back into the bathroom and flushed what had fallen to the floor. The Hearing Officer doesn't believe that happened and finds Arrasmith not consistently credible.

The bartender, Corissa Miller, who the Hearing Officer found credible, was asked by counsel for the Department whether she saw Garza search Stanford. Miller said Stanford kept implying he wanted to be patted down and was pulling at his shorts and emptied his own pockets. She did not testify she saw Garza patting Stanford down. The questioning of Miller by counsel for Petitioner was conclusory or leading regarding a pat down by Garza.

The Hearing Officer finds Garza did not lie when he denied conducting a search of Stanford's person.

(4) Alcohol Consumed. There was no reliable testimony of occurrence witnesses to lead to a conclusion that Garza lied when he said he consumed four drinks that evening.

However, breathalyzer test results and testimony of experts regarding the results of those breathalyzer tests indicate Garza drank substantially more than four beers that night.

However, as set forth above, clearly defined protocol/administrative rules were not followed with respect to the breath test administered to Garza who the Hearing Officer finds did vomit before his breath test.

For the reasons set forth above, the Hearing Officer finds Garza did not lie when he said he consumed only four drinks that evening.

(5) Consuming Beer at Sportsman's. Miller testified Garza "ordered" a Bud Light. Garza said someone bought him a Bud Light. The Hearing Officer cannot conclude that Garza lied about the purchase of a drink at Sportsman's based on this testimony.

Arrasmith said he saw Garza drinking a beer at Sportsman's which could have been a beer from Julie's and that he may have given a beer to Cory Lynch.

Miller said a beer Garza left at the bar was not empty. Garza said he neither purchased nor consumed any alcohol at Sportsman's.

Based on the evidence presented, the Hearing Officer cannot conclude Garza lied at the administrative interview on November 29, 2016.

The Hearing Officer's finding is that Garza did not lie during his November 29, 2016 administrative interview when he stated he neither consumed nor purchased beer at Sportsman's.

(6) Level of Intoxication. At the November 29, 2016 administrative interview, the following question was asked by Deeder and the following answer was given by Garza:

Deeder: Public Safety, yeah. So, um, that is indicated in the reports that they showed up, couldn't get anybody at the front door so then they had to go back in and call and dispatch had an offic, to get ahold of an officer who was on his lunch break to go outside. So, um, is it likely that uh, your level of impairment was to the extent that the situation escalated beyond what it normally would have?

Garza: No, if, if I was actually intoxicated, I would've been, honestly, I probably would have been ready to fight, you know.

Deeder: OK.

Petitioner's Exhibit 3, P57.

The question and the answer are not such that the Hearing Officer can conclude Garza lied.

The Hearing Officer's finding is that Garza did not lie when he answered the above stated questions, as stated.

### **COUNT III**

Count III of the Complaint alleged Garza violated Department Directive ROC-002, Rules of Conduct, Paragraph III.A.55 which states:

"Officers will not obstruct any investigation by destroying, altering, concealing or disguising real evidence or by planting false evidence or furnishing false information to lawful authority."

Count III of the Complaint alleges:

"Garza obstructed an investigation by having Frederick Stanford (hereinafter Stanford) destroy real evidence, consisting of suspected cocaine, when he identified himself to Stanford as a police officer in the bathroom of the Sportsman's Inn Bar in Westville, Illinois and instructed Stanford to throw the suspected cocaine in the toilet and flush it down the drain."

### **FINDING**

The evidence in this case does not demonstrate there was an investigation that was obstructed by Garza telling Stanford to dispose of a substance Garza believed to be cocaine. Garza was not an on-duty officer. The Hearing Officer finds Garza did make a 9-1-1 call which Johnson indicated was the correct thing to do.

The Hearing Officer finds that the Department did not prove by a preponderance of the evidence that Garza violated Rule of Conduct A.55 by obstructing an investigation due to telling Stanford to dispose of suspected cocaine.

#### **COUNT IV**

Count IV of the Complaint alleged Garza violated Department Directive ROC-002, Rules of Conduct, Paragraph III.A.35 which states:

“Officers will not convert to their own use, manufacture, conceal, falsify, destroy, remove, disguise or alter any property or evidence in connection with an investigation or other police action, except in accordance with established Department procedures.”

The Complaint alleged that Garza violated this Rule on August 2, 2015, when Garza destroyed property or evidence, being suspected cocaine, in connection with an investigation or other police action, when he identified himself to Stanford as a police officer in the bathroom of the Sportsman’s Inn Bar in Westville, Illinois and instructed Stanford to throw the suspected cocaine in the toilet and flush it down the drain.

#### **FINDING**

As found with respect to Count III above, the Hearing Officer finds that the Department did not prove by a preponderance of the evidence that Garza violated Rule of Conduct A.35 by destroying evidence in connection with an investigation when he told Stanford to flush a substance he believed to be cocaine at a time when he was not on duty and Garza was not involved in an investigation or engaging in police action. Garza called 9-1-1 to obtain police assistance and attempted to seek assistance from local police officers.

## COUNT V

Count V of the Complaint alleged Garza violated Department Directive ROC-002, Paragraph III.A.47g, which states:

“Officers will not...

“consume alcoholic beverages, while off-duty, to the extent that it results in impairment, intoxication or obnoxious or offensive behavior that discredits them or the Department, or renders the officers unfit to report for their next regular tour of duty.”

Count V of the Complaint alleges that Garza violated this Rule in that on August 2, 2015, while off-duty, he consumed alcoholic beverages to the extent that it resulted in impairment, intoxication or obnoxious and/or offensive behavior that discredited Respondent and/or the Department, in that he was arrogant, cocky and aggressive with witnesses and responding officers while at the Sportsman’s Inn Bar; he insulted and used profane language toward responding officers at the Sportsman’s Inn Bar, calling one of the officers a “dirty cop”; he refused to obey direction from the responding officers to exit the Sportsman’s Inn Bar and to leave the area; he was disrespectful and unpleasant for the responding officers to deal with, to such an extent that Westville Police Officer Joshua Brown attempted to file a formal complaint against him.

## FINDING

The Hearing Officer finds that the Department has proven by a preponderance of the evidence that Garza engaged in obnoxious behavior that discredited the Department, but has not proven by a preponderance of the evidence that the obnoxious behavior stemmed from consumption of alcoholic beverages.

The Hearing Officer finds Garza did not violate Rule of Conduct A.47g.

## **COUNT VI**

Count VI of the Complaint alleged Garza violated Department Directive ROC-002, Paragraph III.A.8 which states:

“Officers will maintain a level of conduct in their personal and business affairs that is in keeping with the highest standards of the law enforcement profession. Officers will not participate in any conduct that impairs their ability to perform as law enforcement officers or causes the Department to be brought into disrepute.”

Count VI of the Complaint alleged that Garza violated this Rule in that on August 2, 2015, while off-duty, he failed to conduct himself in keeping with the highest standards of the law enforcement profession and brought the Department into disrepute when he became intoxicated and refused to leave Sportsman’s Inn Bar causing the bartender to call police to remove him; he was uncooperative and disrespectful to responding officers; and he disobeyed their instruction that he not drive his vehicle from the scene.

## **FINDING**

The Hearing Officer finds that the Department proved, by a preponderance of the evidence, that Garza violated Rule of Conduct A.8 by not immediately following directions of local officers at Sportsman’s and by speaking in a disrespectful manner to the local officers at Sportsman’s. The Hearing Officer finds this Rule violation without a finding Garza was intoxicated.

## **COUNT VII**

Count VII of the Complaint alleged Garza violated Department Directive ROC-002, Paragraph III.A.8 which states:

“Officers will maintain a level of conduct in their personal and business affairs that is in keeping with the highest standards of the law enforcement profession. Officer’s will not participate in any conduct that impairs their ability to perform as law enforcement officers or causes the Department to be brought into disrepute.”

Count VII of the Complaint alleged that Garza violated this Rule in that on August 2, 2015, while off-duty, he failed to conduct himself in keeping the highest standards of the law enforcement profession and brought the Department into disrepute when he became intoxicated and was involved in a verbal and physical altercation with Casey Mason while attempting to order food at Steak n Shake while standing in the drive thru lane, as a result of which he displayed his secondary firearm and it discharged two rounds, resulting in a criminal investigation against him by the Danville Police Department.

### **FINDING**

The Hearing Officer finds that Garza violated Rule of Conduct A.8 by using poor judgment in not immediately, while he was on foot, leaving the Steak n Shake drive thru line when Mason first approached him and by not immediately walking away from Mason when Mason approached a second time. His poor decision to walk up to a drive thru window in the middle of the night and then not immediately walk away from an irritated driver using the drive thru for its intended purpose did serve as the catalyst to bring the Department into disrepute. There were newspaper articles about the event.

### **COUNT VIII**

Count VIII of the Complaint alleged Garza violated Department Directed ROC-002, Paragraph III.A.38 which states:



“Officers will utilize Department equipment only for its intended purpose, in accordance with established Department procedures and will not abuse or damage Department equipment. Officers will use reasonable care to avoid loss of Department equipment. All Department equipment issued to officers will be maintained in proper order.”

Count VIII of the Complaint alleges that Garza violated this Rule in that on August 2, 2015, while off-duty, he utilized his Department issued PBT on an unidentified female at Josephine’s Bar for personal reasons not associated with the performance of his duties.

### **FINDING**

The Hearing Officer finds that the Department did not prove by a preponderance of the evidence that Garza violated Rule of Conduct A.38.

The Hearing Officer does not find that Garza used a Department issued PBT on an unidentified female at Josephine’s Bar. Such a finding would require the Hearing Officer to rely solely on the testimony of Arrasmith which the Hearing Officer does not find reliable.

### **V. CONCLUSIONS OF LAW**

1. The Illinois State Police Merit Board has jurisdiction over the parties hereto and the subject matter of this case.
2. This matter is decided exclusively on the evidence admitted at the hearing held in this case.
3. The burden of proof in this case rests upon the Department. The Department is required to prove the allegations of the Complaint by a preponderance of the evidence (80 Ill. Adm. Code Ch. IV Secs. 150.665(f), 150.680(a)). By requiring proof of a matter by preponderance of the evidence, the Department is required to prove that the matters asserted are more probably true than not true (Illinois Pattern Jury Instructions, Civil, 21.01).

4. With respect to Count I of the Complaint, the Hearing Officer concludes that the Department has not proven a violation of Rule of Conduct 47.b. The Hearing Officer finds that the testimony of Garza and the combined testimony of witnesses who observed him on August 2, 2015, does not support a finding of Garza driving under the influence.

The Hearing Officer finds that though BAC test results and expert analysis of those results demonstrate that Garza was intoxicated when he drove to Steak n Shake on August 2, 2015, Illinois Administrative Rules were disregarded on August 2, 2015, when Garza was not observed for 20 minutes prior to his breath test to ensure no vomiting. The Illinois Supreme Court said in People v. Bonutti that the purpose of Section 1286.310(a) of the Illinois Administrative Code (20 minute waiting period) is to ensure only accurate breath-alcohol tests are admitted.

5. With reference to Count II of the Complaint the Hearing Officer concludes that the Department has not proven that Garza violated Rule of Conduct 41.c by lying during his administrative interview.

6. With reference to Count III of the Complaint the Hearing Officer concludes that the Department has not proven that Garza violated Rule of Conduct A.55 by obstructing an investigation of Stanford by instructing him to flush suspected cocaine.

7. With respect to Count IV of the Complaint the Hearing Officer concludes that the Department has not proven that Garza violated Rule of Conduct A.35 by destroying suspected cocaine in connection with an investigation or police action when he told Stanford to flush suspected cocaine.

8. With respect to Count V of the Complaint the Hearing Officer concludes that the Department has not proven that Garza violated Rule of Conduct A.47(g) by consuming alcohol

to the extent that alcohol consumption resulted in obnoxious, offensive behavior at Sportsman's Inn Bar.

9. With respect to Count VI of the Complaint the Hearing Officer concludes that Garza did violate Rule of Conduct A.8 by failing to conduct himself in keeping with the highest standards of law enforcement professionals and brought the Department into disrepute by his behavior at Sportsman's in refusing to immediately comply with the directions of local police officers and by using disrespectful language toward local police officers.

10. With respect to Count VII of the Complaint the Hearing Office concludes that Garza did violate Rule of Conduct A.8 when he did not, while on foot, immediately back away from a drive thru lane when it became clear the driver, using the drive thru line for its intended purpose, became irritated. Garza's failure to use basic good judgment served as a catalyst for events that brought the Department into disrepute.

11. With respect to Count VIII of the Complaint the Hearing Officer concludes that the Department has not proven a violation of Rule of Conduct A.38. The Hearing Officer finds the Department did not prove Garza used a Department issued PBT on an unidentified female at Josephine's Bar.

## **VI. PENALTY CONSIDERATION**

The Department seeks termination of Trooper Garza's employment with the Illinois State Police.

The imposition of any appropriate penalty in this case is within the exclusive discretion of the Illinois State Police Merit Board. No recommendation, therefore, is made by the Hearing Officer with respect to an appropriate penalty to be imposed on Garza in the event the Board

finds a violation or violations of Rules of Conduct. In an effort to assist the Board in its assessment of penalty considerations, the Hearing Officer offers the following:

1. Evidence was detailed in the above stated portions of this Recommended Findings of Fact and Conclusions of Law with reference to Trooper Garza's stellar work performance as testified to by several supervisors. Written evaluations can be found at Respondent's Exhibit 2. Trooper Garza had never been disciplined or counseled in the past.

2. Counsel for Trooper Garza presented a number of cases as precedential authority with respect to the imposition of penalties. Those cases were addressed in questioning of Colonel Joann Johnson (cases involving Special Agent Lori Houston, Master Sergeant Chadd Brady and Special Agent Timothy Brown). Respondent's Exhibit 4 contains cases that may or may not assist the Board in the penalty phase of this case. Trooper Garza, in his closing arguments, said that Other Department officers who allegedly engaged in conduct similar or identical to that of Garza have not been treated the same by the Department. Garza summarizes the precedent cases, introduced into evidence as Respondent's Exhibit 4, as follows:

April 18, 1994 Merit Board Decision in the Matter of Trooper William Burge

Trooper Burge received a 60 day suspension for a violation of Rule of Conduct A.1 for driving under the influence of alcohol in violation of 625 ILCS 5/11-501, a violation of Rule A.40 for failing to operate his official vehicle in a careful and prudent manner, a violation of A.51 for operating his official vehicle after consuming alcoholic beverages to the point of impairment, a violation of A.52 for failure to refrain from consuming intoxicating beverages to the extent that it results in impairment, intoxication or obnoxious or offensive behavior and a violation of EQP-2, V.D. which provides the Department vehicles will not be used as personal transportation.

October 9, 2001 Merit Board Decision in the Matter of Special Agent Lance Dillon

Special Agent Dillon received a 90 day suspension for a violation of Rule A.7 for operating his assigned Department vehicle while off duty on three occasions, interacting with the local chief of police in a loud, rude and profane manner, consuming intoxicating beverages to the extent it resulted in obnoxious and/or offensive behavior, consuming alcohol with a person he knew or should have known was under the age of 21, submitting a memorandum to his supervisor that contained false information and giving false statements during his administrative interview. Dillon was also found guilty of violating Rule A.12 for failure to take appropriate action on the occasion of a crime, a violation of A.39 for operating his assigned Department vehicle while off duty, a violation of A.42c for being untruthful in his administrative interview, a violation of A.52 for consuming intoxicating beverages to the extent it resulted in his obnoxious and/or offensive behavior and a violation of A.62 for submitting a memorandum to his supervisor which contained false information.

June 25, 2004 Merit Board Decision in the Matter of Trooper Jason Blessing

Trooper Blessing received a 90 day suspension for a violation of Rule of Conduct A.2 after being arrested for driving under the influence of alcohol, a violation of A.52, which states officers while off duty will refrain from consuming intoxicating beverages to the extent it results in impairment, a violation of A.14 for obtaining privileges not otherwise available to him except in the performance of duty and a violation of A.7 for unbecoming conduct.

April 6, 2016 Merit Board Decision in the Matter of Trooper Chad Martinez

Trooper Martinez received a 120 day suspension based upon a Joint Motion for a Decision of the Merit Board. He admitted Counts 2, 3, 4 and 6 of the Merit Board Complaint. He

violated Rule of Conduct A.8, moral turpitude, when on December 12, 2014, he falsely represented his purpose for boarding the Hollywood Casino riverboat and, while off duty and under the influence of alcohol, caused a disturbance on the riverboat by parking in a handicapped valet area, refusing to pay for parking, using his department credentials to secure the parking and attempting to use his department credentials to gain free admission to the riverboat while being argumentative and uncooperative with law enforcement officers. Trooper Martinez also admitted a violation of Rule A.52, which states officers will refrain from consuming intoxicating beverages to the extent it results in impairment or intoxication when he drove his personal vehicle while under the influence of alcohol. He admitted a violation of Rule A.14, which states officers will not use their official position, official identification cards or stars for personal financial gain when he used those credentials to secure free parking in the handicapped valet area and falsely represented his purpose for boarding the riverboat.

October 21, 2011 Merit Board Decision in the Matter of Special Agent Timothy Brown

Trooper Brown received a 60 day suspension based upon a Joint Motion for a Decision of the Merit Board. On March 26, 2010, he violated Rule A.2 while at the Schoolhouse Strip Club in Neoga, Illinois when he was involved a brawl and pled guilty to a misdemeanor charge of reckless conduct. He also violated Rule A.43 for using more force than necessary in that situation, A.47g for consuming alcoholic beverages while off duty to the extent it resulted in obnoxious or offensive behavior, A.8 for bringing the Department into disrepute and A.59 for failing to notify his supervisor about his involvement in the physical altercation.

December 21, 2012 Negotiated Official Disciplinary Action of Special Agent Lori Houston

Special Agent Houston received a Letter of Reprimand for conduct when on more than one occasion during the previous year she failed to take appropriate actions when she received illegal drugs belonging to her son. Special Agent Houston flushed the illegal drugs down the toilet and was found to have violated Rule A.8 for failure to act appropriately when confronted with illegal activity while off duty.

April 21, 2014 Merit Board Decision in the Matter of Special Agent Chadd Brody

Master Sergeant Brody received a 90 day suspension based upon a Joint Motion for a Decision of the Merit Board. On December 31, 2012, and January 1, 2013, while off duty, Master Sergeant Brody was at a bar in Carlsbad, California. He was arrested and on April 24, 2013, he pled guilty to the misdemeanor offense of resisting an officer. He admitted violations of Rules A.1 and A.2 for committing the offense of resisting an officer in violation of the California Penal Code, a violation of A.1 for obstructing peace officers from the Carlsbad Police Department in the discharge of their duties, a violation of A.47g for consuming alcoholic beverages resulting in impairment, intoxication, obnoxious or offensive behavior and a violation of Rule A.8 for bringing the Department into disrepute by groping the body of a female bar patron, engaging in verbal and/or physical altercations with the bar security, refusing to leave the premises when requested by security, repeatedly identifying himself as an Illinois State Police officer and resisting arrest and struggling with the Carlsbad Police Department officers.

Garza argues he is not likely to engage in similar misconduct in the future. He argues the occurrences on August 1 and 2, 2015, were an aberration from the type of conduct normally displayed by him. He argues the conduct involved unforeseen occurrences with Stanford and Mason. Garza notes he was off work for approximately 12 months without any chance of recovering back pay. Thereafter, and to the present, Garza has worked administrative duties with

no police powers. Garza argues he has learned his lesson and is eager to return to work as a Trooper who will continue to lead his District in most enforcement activities. Garza argues, if given another chance, he will make the Department proud.

The Department, in its Closing Arguments, states the following with respect to progressive discipline and cases that could be deemed precedential:

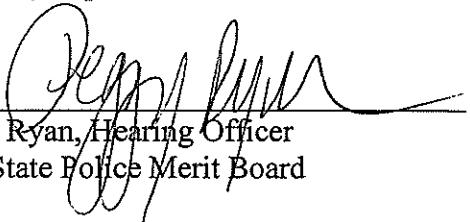
The law does not require ISP or the Merit Board to use corrective or progressive discipline before imposing discharge. As stated above, the law requires only that discipline be imposed for cause. See Siwek v. Police Bd. Of City of Chicago, 374 Ill. App. 3d 735, 738 (2007) (“An officer’s violation of a single rule has long been held to be a sufficient basis for termination.”) (citations omitted).

The law also does not require the Merit Board to consider discipline imposed in completely separate cases when the only connecting factor is the similarity of the charges. Robbins v. Dep’t of State Police Merit Bd., 2014 Ill. App. (4<sup>th</sup>) 130041 at ¶49 (the fact that different individuals have been disciplined differently is not a basis for concluding that an agency’s disciplinary decision is unreasonable, even when the individuals receive different discipline in a single, identical, completely related case). More importantly, while a hearing officer may consider sanctions imposed in similar cases, each case must be considered on its merits, and it is for the agency to determine the appropriate sanction in each case. *Id.* At ¶50 (citing Siddiqui v. Dep’t of Prof’l Reg., 307 Ill. App. 3d 753, 764 (1999)). In any case, the charges in this matter and the conduct at issue are more severe than the charges and conduct in the prior Merit Board cases cited by Respondent. As such, the more severe discipline of discharge is appropriate here.



The Hearing Officer turns to the Robbins case (a case where an officer engaged in bad behavior over the course of 8 months) for its conclusion that ¶45 Section 14 of the State Police Act (20 ILCS 2610/14 (2006)) provides no State Police officer shall be removed “except for cause.” The term “cause” “has been judicially defined as some substantial shortcoming which renders the employee’s continuance in office in some way detrimental to the discipline and efficiency of the service and which the law and sound public opinion recognize as good cause for him no longer holding the position.” (Internal quotation marks omitted.) Merrifield, 294 Ill. App. 3d at 529-30, 691 N.E. 2d at 198-99

Respectfully submitted in Springfield, Illinois  
on Monday, April 2, 2018.

  
\_\_\_\_\_  
Peggy J. Ryan, Hearing Officer  
Illinois State Police Merit Board

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**PROOF OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing document was served by e-mailing and by placing same in a sealed envelope addressed to:

gstudach@iltroopers41.org

Mr. Guy Studach  
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Ms. Anupama Paruchuri  
Ms. Samantha Costello  
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and by placing same in the United States mail, postage fully prepaid, on the 2<sup>nd</sup> day of April, 2018.

A handwritten signature in black ink, appearing to read "Guy Studach", is written over a horizontal line.

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STATE OF ILLINOIS

ILLINOIS STATE POLICE MERIT BOARD

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JUL 06 2017

ILLINOIS STATE POLICE  
MERIT BOARD

IN THE MATTER OF:

TROOPER CODY M. GARZA

I.D. No. 6269



)  
)  
) Illinois State Police  
) Merit Board No. 17-  
)  
)

COMPLAINT

NOW COMES Leo P. Schmitz, Director of the Illinois State Police, pursuant to 20 ILCS 2610/14 and 80 Ill. Admin. Code § 150.575, and states as follows:

COUNT I

DRIVING UNDER THE INFLUENCE OF ALCOHOL

1. Cody M. Garza (Respondent) is employed as a State Police Officer by the Illinois State Police (Department). Respondent holds the rank of Trooper and has been employed by the Department since August 21, 2011. At all times relevant to this Complaint, Respondent was assigned to patrol duties in District 5, Lockport, Illinois.

High School Reunion - Forest Glenn Park, Vermilion County

2. On August 1, 2015, Respondent attended his ten-year high school reunion for Georgetown Ridge Farm High School. Respondent was off-duty, driving his personal vehicle, and wearing his secondary firearm on his person. The reunion was held at Forest Glenn Park in Vermilion County. Respondent was at the reunion from approximately 8:00 p.m. until 10:30 p.m., during which time he consumed beers from a 12-pack of beer which he had in a cooler in his vehicle.

3. Shane Arrasmith, a classmate of Respondent's, filled Respondent's cooler with ice prior to leaving the reunion and only three to five beers remained in the cooler at that time. Respondent denied sharing the beer in his cooler with anyone else at the reunion.

**Josephine's Bar and Julie's Bar - Georgetown and Westville**

4. After the reunion Respondent drove his personal vehicle to Georgetown. At 10:35 p.m. while en route to Georgetown Respondent called 911 to report two suspicious people walking in the roadway. When in Georgetown Respondent went to Josephine's Bar to meet several other classmates from the reunion, including Oakley Sapp, Shane Arrasmith, and Cory Lynch. Respondent admitted consuming two beers at Josephine's Bar.
5. While in Josephine's Bar Respondent used his Department-issued Portable Breath Test (PBT) device upon an unidentified female in order to test her breath alcohol content. Respondent did so for personal reasons and was not taking any official enforcement action at the time. Respondent admitted having his Department PBT with him but denied using it on any person in Josephine's Bar despite the fact several witnesses observed him do so.
6. Respondent and his classmates left Josephine's Bar at approximately 1:45 a.m. and Respondent drove by himself in his personal vehicle to Westville. Respondent eventually met Shane Arrasmith, Oakley Sapp, and Cory Lynch at Julie's Bar, where Arrasmith observed Respondent consume alcohol. Respondent denied ever being in Julie's Bar that evening, despite the fact Arrasmith and Lynch stated they were with him there.

Sportsman's Inn Bar - Encounter with Frederick Stanford and Westville Police

7. Respondent, Arrasmith, Sapp, and Lynch walked from Julie's Bar to the Sportsman's Inn Bar (Sportsman's), which was across the street, arriving at approximately 2:00 a.m. Arrasmith observed Respondent consume alcohol in the Sportsman's. The bartender served Respondent two beers, and she observed his Illinois State Police star in his wallet as he retrieved his driver's license. Respondent denied ever purchasing or consuming beer at the Sportsman's.
8. The Sportsman's closed at 3:00 a.m. Around closing time bartender Corriisa Miller advised Respondent it was time to leave, and Respondent asked her to the effect "what if I don't leave?." Miller told Respondent he should not say things like that, especially because he had a badge. Respondent told her to the effect "you don't know if that's real or means anything."
9. Shortly before closing Respondent went to the men's bathroom, where he encountered a black male later identified as Fredrick Stanford. While in the bathroom, Stanford attempted to sell Respondent cocaine. Stanford pulled two small bags out of his pocket which appeared to be cocaine. Respondent told Stanford he was a police officer, showed Stanford his badge, and instructed Stanford to flush the cocaine down the toilet, which Stanford did.
10. Respondent later searched Stanford by the pool table to see if he had more drugs on his person. Respondent denied ever searching Stanford's person, despite the fact Shane Arrasmith observed Respondent search Stanford and held some of the contents of Stanford's pockets during the search.

11. Bartender Corriisa Miller observed Respondent and Stanford in the restroom hallway and told them they needed to leave the bar as it was closed. Respondent would not let Stanford leave the bar. Miller had her co-worker call the police in order to remove them from the bar. Miller later saw Respondent and Stanford near the pool table where she saw Respondent pat Stanford down several times. At approximately 3:16 a.m. Miller called the police again in order to remove them from the bar.
12. Officers from several local police departments arrived at the Sportsman's. Westville Police Officer Josh Brown was told by one of the bartenders while in the parking lot that the three subjects in the bar were refusing to leave. Officer Brown entered the bar and observed Respondent, Stanford, and Arrasmith standing in close proximity to each other. Stanford had both hands on the bar with his wallet in one hand. Even though Respondent observed Officer Brown in uniform, Officer Brown heard Respondent on his cell phone continuing to ask for police to come to the bar.
13. Officer Brown told the three men to exit the bar and leave for the night. Respondent then realized Brown was a police officer and identified himself as a State Trooper. Respondent informed Officer Brown he wanted Stanford arrested for possession of cocaine. Based upon his observations and training, Officer Brown believed Respondent was intoxicated. Due to Respondent's condition Office Brown again requested he leave the bar. Officer Brown then talked with Stanford who advised that Respondent had been preventing him from leaving the bar. Officer Brown did a cursory pat down of Stanford and requested that he

leave. Respondent became irate and belligerent, stating Officer Brown's actions were "bullshit" and that Stanford was a drug dealer.

14. Respondent, Stanford, and Arrasmith exited the bar and went to the parking lot where other officers and patrons were congregating. While in the parking lot Respondent appeared upset, was rude and insulting to the responding officers, called one of them a "dirty cop" and continued to yell "this is fucking bullshit." Officer Brown exited the bar and observed a Tilton Officer instruct Respondent and Stanford that they needed to leave the area. Stanford told Officer Brown Respondent was again preventing him from leaving. Officer Brown advised Stanford he could leave now, and Stanford did so.
15. Officer Brown then instructed Respondent numerous times to leave the area. Respondent and others then stood in the parking lot of the Dollar General store, next to the Sportsman's parking lot, and advised the officers they were no longer on the Sportsman's property and could not be forced to leave the Dollar General property. Officer Brown advised Respondent that if Respondent did not leave the area, he would arrest Respondent for disorderly conduct. Respondent then went to his vehicle and Officer Brown advised him not to drive due to his impaired condition or else he would be arrested for DUI. Respondent then left the scene in Oakley Sapp's vehicle and left his truck at the Sportsman's. Due to Respondent's disrespectful behavior Officer Brown attempted to file a formal complaint against Respondent.
16. Respondent returned to the Sportsman's approximately ten minutes later and retrieved his vehicle, which Respondent then drove from the scene to Danville.

Danville Steak N' Shake – Altercation with Casey Mason Involving Discharge of Firearm, and Criminal Investigation by Danville Police Department.

17. Respondent drove his personal vehicle to the Steak N' Shake restaurant in Danville and arrived at approximately 3:45 a.m. Respondent met Oakley Sapp there, who had driven his own vehicle. Respondent parked his truck and attempted to enter the restaurant with Sapp, but the inside was closed and they were told to use the drive-thru service. Rather than go through the drive-thru lane in one of their trucks, Respondent and Sapp walked up to the speaker station and attempted to order while standing in the lane.
18. After waiting to order, a car pulled into the drive-thru lane behind Respondent and Sapp. The car was driven by Dynisha Tools with Casey Mason and their child as passengers. After Mason observed Respondent and Sapp standing in the lane without ordering, Mason stepped out of his car and approached Respondent to see what was taking so long. When Respondent told Mason he was waiting for an employee to take his order, Mason suggested Respondent allow him and Tools to drive through the lane and order, and he would let the restaurant know that Respondent was behind them wanting to order on foot. Respondent declined this suggestion and said he would just wait, so Mason returned to his car. Sapp returned to his truck to call another restaurant to see if they were open.
19. After waiting further for Respondent to place an order, Mason approached Respondent again, as a second vehicle pulled into the drive-thru lane behind



Tool's car. This time Mason told Respondent to get out of the drive-thru so he and Tools could order. Respondent advised Mason he was a police officer and showed him his badge. Mason did not believe Respondent was really a police officer because Respondent was intoxicated and standing in the drive-thru lane trying to order food.

20. Respondent and Mason had a heated argument, and Mason pushed Respondent, who fell to the ground. Respondent got up and pushed Mason, then reached behind his back. Mason told Respondent to the effect of "stop reaching for whatever you are reaching for" and shoved Respondent. As Respondent pulled his secondary firearm out of his holster Mason punched Respondent in the face, jumped on Respondent and attempted to grab Respondent's firearm as the two of them fell backward to the ground.
21. While falling to the ground Respondent attempted to point his gun at Mason but it discharged next to Mason's head. A second round discharged in the ensuing struggle, and Mason eventually wrestled the gun away from Respondent.
22. After obtaining Respondent's gun Mason ran to the front door of the restaurant, then got in Tool's vehicle, and they drove away. Tool and Mason drove to the Danville Police Department and reported the incident to police, who recovered the weapon.
23. At 3:52 a.m., Steak N' Shake employees called 911 to report the shooting, and that they observed a man with a gun at their door (Mason). Officers were dispatched to the scene.

24. Respondent was questioned at the scene by a patrolman from the Danville Police Department and described the altercation with Mason. In his statement to police at the scene, Respondent did not report that he had identified himself as a State Trooper to Mason, that he had drawn his weapon from his holster, that he and Mason fought for the gun, or that any shots had been fired.
25. Respondent was interviewed at the police station later that morning by detectives from the Danville Police Department. In that interview, among other statements, Respondent stated he was not aware that two shots were fired, but was aware of only the first shot.
26. At the request of the detectives Respondent voluntarily submitted to a breathalyzer. The breath test was conducted at 6:59 a.m. on August 2, 2015, at which time Respondent's BAC was 0.153. According to Respondent he did not consume any alcohol after he left Josephine's Bar at approximately 1:45 a.m.
27. At 7:35 a.m. Respondent was observed by detectives throwing up in a trash can in the police interview room.
28. John Wetstein, the Department's Toxicology Training Coordinator and an expert in forensic toxicology, reviewed the facts pertaining to Respondent's alcohol consumption and provided an estimate of Respondent's BAC at the time he drove his vehicle from the Sportman's Inn Bar in Westville to the Danville Steak N' Shake. In Mr. Wetstein's expert opinion, on August 2, 2015, between 3:30 a.m. and 3:45 a.m., Respondent's BAC would have been between 0.185 and 0.223. Mr. Wetstein was also of the opinion that Respondent would have had to

consume approximately 13 to 18 standard 12-ounce beers to reach a BAC level of 0.153 at 6:59 a.m. on August 2, 2015, as indicated by his breath test.

29. On November 29, 2016, agents from the Department's Division of Internal Investigation (DII) conducted an administrative interview of Respondent in the presence of his attorney after giving Respondent notice of the allegations under investigation and his administrative proceedings rights. During his administrative interview, among other statements, Respondent stated as follows:

- (a) that he only drank two IPA beers while at the reunion, which came from a 12-pack in his cooler located in the back of his truck;
- (b) that he did not give any beer in his cooler to anybody else;
- (c) that he consumed two Bud Light Margarita beers at Josephine's Bar;
- (d) that he never used his Department issued PBT on a female while in Josephine's Bar;
- (e) that he had never discussed with his command whether he was authorized to carry his PBT while off-duty and use it for purposes outside of work;
- (f) that he never went inside of Julie's Bar;
- (g) that he went to the Sportsman's Inn Bar with Oakley Sapp, Corey Lynch, and Shane Arrasmith;
- (h) that he did not consume or purchase any alcohol while in Sportsman's Inn Bar;

- (i) that he did not recall telling the bartender at Sportsman's Inn Bar to the effect of "what if I don't leave";
- (j) that in the bathroom a subject pulled two small bags out of the subject's pocket, showed it to him and then attempted to sell him cocaine;
- (k) that he told the subject he was a cop and showed the subject his badge and told the subject to throw the cocaine in the toilet, which the subject did and flushed it down the toilet;
- (l) that he did not search the subject's person, nor did he ever place his hands on the subject;
- (m) that after leaving the bathroom the subject kept trying to talk with him and would not leave him alone so he called 911 and reported that the subject tried to sell him cocaine and was pestering him, and requested the police to see if the subject had more drugs on him;
- (n) that he identified himself as a State Police Officer to the responding Westville police officers and told them they were the reason people hate police officers and that their handling of the matter was "bullshit" and that the officer was "being an ass to us";
- (o) that he made comments to the police which were "diskind";
- (p) that he was told by the police two or three times to leave the parking lot;

- (q) that the Westville officers never told him not to drive his vehicle from the bar because they felt he was intoxicated;
- (r) that he initially left his vehicle at the scene and left with Oakley Sapp, but that they went three blocks and then went back to get his vehicle;
- (s) that he drove his vehicle from the Sportsman's Inn Bar to the Steak N' Shake restaurant in Danville;
- (t) that he only consumed four beers the entire evening;
- (u) that he was attempting to order food while standing in the drive-thru lane;
- (v) that a car pulled into the drive-thru lane behind him, and a man got out of the vehicle and told him to get out of the way, so he took his badge out and showed it to him and stated he was a cop;
- (w) that the man pushed him twice, and he fell to the ground;
- (x) that he got up, and as the man pushed him again he reached for his firearm and brought it out to display it;
- (y) that the man hit him and tackled him, and they fell to the ground, and the gun discharged a round;
- (z) that he was trying to raise his gun but couldn't as the man's hand was on it;
- (aa) that he was trying to protect his life;
- (bb) that he gave a breath alcohol sample to investigators at the Danville Police Department after the shooting;

- (cc) that the altercation at the Steak N' Shake occurred at "late 3 o'clock";
- (dd) that his BAC was .15 when tested; and
- (ee) that his level of impairment at the time of the altercation was not beyond what it normally is.

30. All or a portion of the facts set forth herein constitute Respondent's violation of Departmental Directive ROC-002, Rules of Conduct, Paragraph III.A.47.b., which states:

"Officers will not: ...

- (b) while on or off duty, drive or be in physical control of a vehicle while under the influence of alcohol, any other drugs, intoxicating compounds, or any combination thereof."

**(First Offense-Level 7 Misconduct, Up to Termination)**

Respondent violated this rule in that on August 2, 2015, while off-duty, he drove his personal vehicle while under the influence of alcohol in Vermilion County, Illinois.

**COUNT II**

**FAILURE TO TRUTHFULLY ANSWER QUESTIONS**

**IN AN ADMINISTRATIVE INTERVIEW**

1.-29. Paragraphs 1. through 29., inclusive, of Count I of the Complaint are adopted and incorporated by reference as Paragraphs 1. through 29., inclusive, of Count II as if fully set out herein.

30. All or a portion of the facts set forth herein constitute Respondent's violation of Department Directive ROC-002, Rules of Conduct, Paragraph III.A.41.c., which states:

"Officers are required to truthfully answer questions by, or render material and relevant statements to, competent authority in a Department personnel investigation when said officer: ...

- (c) is the subject of the investigation and has been advised of his/her statutory administrative proceedings rights if the allegation indicates that a recommendation for demotion, suspension of more than 15 days or discharge from the Department is probable."

**(First Offense-Level 7 Misconduct, Up to Termination).**

Respondent violated this rule in that on November 29, 2016, Respondent did not truthfully answer questions in a Department personnel investigation when he made the following statements in his administrative interview, each of which is not true:

- A. That he did not use his Department-issued PBT on a female subject while inside Josephine's Bar;
- B. That he did not go inside Julie's Bar in Westville;
- C. That he did not conduct a search of Frederick Stanford's person while in the Sportsman's Inn Bar;
- D. That he only consumed four beers that evening, two at the reunion and two at Josephine's Bar;

- E. That he did not consume nor purchase any beers while at the Sportsman's Inn Bar; and
- F. That his level of impairment at the time of the altercation with Casey Mason was not beyond what it normally is, meaning that he was not intoxicated during the altercation with Mason.

### COUNT III

#### OBSTRUCTING AN INVESTIGATION

##### BY DESTROYING EVIDENCE

- 1.-29. Paragraphs 1. through 29., inclusive, of Count I of the Complaint are adopted and incorporated by reference as Paragraphs 1. through 29., inclusive, of Count III as if fully set out herein.
- 30. All or a portion of the facts set forth herein constitute Respondent's violation of Department Directive ROC-002, Rules of Conduct, Paragraph III.A.55., which states:

"Officers will not obstruct any investigation by destroying, altering, concealing or disguising real evidence, or by planting false evidence or furnishing false information to lawful authority."

**(First Offense-Level 7 Misconduct, Up to Termination).**

Respondent violated this rule in that on August 2, 2015, he obstructed an investigation by having Frederick Stanford destroy real evidence, consisting of suspected cocaine, when he identified himself to Stanford as a police officer in the bathroom of the Sportsman's Inn Bar in Westville, Illinois, and



i n s t r u c t e d   Stanford to throw the suspected cocaine in the toilet and flush it down the drain.

#### COUNT IV

#### DESTRUCTION OF EVIDENCE

- 1.-29. Paragraphs 1. through 29., inclusive, of Count I of the Complaint are adopted and incorporated by reference as Paragraphs 1. through 29., inclusive, of Count IV as if fully set out herein.
30. All or a portion of the facts set forth herein constitute Respondent's violation of Department Directive ROC-002, Rules of Conduct, Paragraph III.A.35., which states:

“Officers will not convert to their own use, manufacture, conceal, falsify, destroy, remove, disguise, or alter any property or evidence in connection with an investigation or other police action, except in accordance with established Departmental procedures.”

#### **(Level 4 Misconduct: 31 to 45 Days)**

Respondent violated this rule in that on August 2, 2015, he destroyed property or evidence, being suspected cocaine, in connection with an investigation or other police action, when he identified himself to Frederick Stanford as a police officer in the bathroom of the Sportsman's Inn Bar in Westville, Illinois, and i n s t r u c t e d Stanford to throw the suspected cocaine in the toilet and flush it down the drain.

## COUNT V

### CONSUMPTION OF ALCOHOL OFF-DUTY

1.-29. Paragraphs 1. through 29., inclusive, of Count I of the Complaint are adopted and incorporated by reference as Paragraphs 1. through 27., inclusive, of Count V as if fully set out herein.

30. All or a portion of the facts set forth herein constitute Respondent's violation of Department Directive ROC-002, Paragraphs III.A.47g., which states:

"Officers will not: ...

(g) "consume alcoholic beverages, while off-duty, to the extent that it results in impairment, intoxication, or obnoxious or offensive behavior that discredits them or the Department, or renders the officers unfit to report for their next regular tour of duty."

**(First Offense – Level 3 Misconduct: 15 to 30 Days).**

Respondent violated this rule in that on August 2, 2015, while off-duty, he consumed alcoholic beverages to the extent that it resulted in impairment, intoxication, or obnoxious and/or offensive behavior that discredited Respondent and/or the Department, in that he was arrogant, cocky, and aggressive with witnesses and responding officers while at the Sportsman's Inn Bar; he insulted and used profane language toward responding officers at the Sportsman's Inn Bar, calling one of the officers a "dirty cop"; he refused to obey direction from the responding officers to exit the Sportsman's Inn Bar and to leave the area; he was disrespectful and unpleasant for the responding officers to deal with, to such

an extent that Westville Police Officer Joshua Brown attempted to file a formal complaint against him.

## COUNT VI

### BRINGING THE DEPARTMENT INTO DISREPUTE –

#### SPORTSMAN'S INN BAR

1.-29. Paragraphs 1. through 29., inclusive, of Count I of the Complaint are adopted and incorporated by reference as Paragraphs 1. through 29., inclusive, of Count VI as if fully set out herein.

30. All or a portion of the facts set forth herein constitute Respondent's violation of Department Directive ROC-002, Paragraphs III.A.8., which states:

“Officers will maintain a level of conduct in their personal and business affairs that is in keeping with the highest standards of the law enforcement profession. Officers will not participate in any conduct that impairs their ability to perform as law enforcement officers or causes the Department to be brought into disrepute.”

**(First Offense – Level 2 Misconduct: 4 to 10 Days).**

Respondent violated this rule in that on August 2, 2015, while off-duty, he failed to conduct himself in keeping with the highest standards of the law enforcement profession and brought the Department into disrepute when he became intoxicated and refused to leave the Sportsman's Inn Bar causing the bartender to call the police to remove him; he was uncooperative and

firearm and it discharged two rounds, resulting in a criminal investigation against him by the Danville Police Department.

## COUNT VIII

### IMPROPER USE OF DEPARTMENT EQUIPMENT

- 1.- 29. Paragraphs 1. through 29., inclusive, of Count I of the Complaint are adopted and incorporated by reference as Paragraphs 1. through 29., inclusive, of Count VIII as if fully set out herein.
30. All or a portion of the facts set forth herein constitute Respondent's violation of Department Directive ROC-002, Paragraphs III.A.38., which states:

"Officers will utilize Department equipment only for its intended purpose, in accordance with established Department procedures and will not abuse or damage Department equipment. Officers will use reasonable care to avoid loss of Department equipment. All Department equipment issued to officers will be maintained in proper order."

**(First Offense – Level 1 Misconduct: Reprimand to 3 Days).**

Respondent violated this rule in that on August 2, 2015, while off-duty, he utilized his Department issued PBT on an unidentified female at Josephine's Bar for personal reasons not associated with the performance of his duties.

## CERTIFICATION

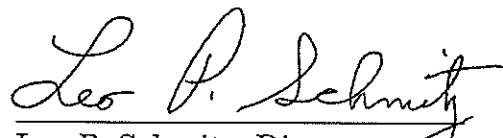
A copy of Illinois State Police Department Directive ROC-002, Rules of Conduct, is provided in the incorporated attachment and is certified by the Director as accurate,

complete, and in full force and effect at the time the aforementioned acts were committed.

CONCLUSION

**WHEREFORE**, by reason of these facts and charges, I request the Illinois State Police Merit Board conduct a hearing in this matter and discharge Respondent from employment with the Illinois State Police.

Respectfully submitted,

  
Leo P. Schmitz, Director

Illinois State Police  
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